DRUG ADDICTS ARE HUMAN BEINGS

The Story of

Our Billion-Dollar Drug Racket

HOW WE CREATED IT AND
HOW WE CAN WIPE IT OUT

By

HENRY SMITH WILLIAMS, M.D., B.Sc., LL.D.

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With a Statement of the Narcotics Problem

By

HON. JOHN M. COFFEE
of Washington

(Reprinted from the *Congressional Record*)

Washington, D. C.
SHAW PUBLISHING COMPANY
1938

PRINTED IN THE UNITED STATES OF AMERICA
FOR THE PUBLISHERS BY KINGSPORT PRESS, INC.

The Author

THIS is the one-hundred-and-nineteenth published book—to say nothing of a multitude of magazine articles of the widest medical and scientific import—of this distinguished scientist, biologist, psychiatrist and physician. Taken in conjunction with his researches and a medical practice that has included personal attendance upon ten thousand patients, it may easily be said that Dr. Henry Smith Williams, always athletic, dynamic and indefatigable, has accomplished the equivalent of the life-time work of three able and busy scientific men.

The clarity and charm of his style has been matched, if ever, by few medical writers. It was once said of Dr. Henry Smith Williams that he knew more about the chemistry and biology of the blood cells than any other man in America. He once gave ten years to an intensive study of cancer, with startling and most constructive results, and perhaps the most important of his medical works, reporting these researches, was "The Proteomorphic Theory and the New Medicine" (1918), which you will find in medical libraries.

His works include "The Great Astronomers" and "The Biography of Mother Earth," both with his own illustrations, "Luther Burbank—His Life and Work" (12 volumes), "Mechanism of Immunity," "The Historians' History of the World" (25 volumes), "Civilization" (in Encyclopedia Britannica, 1910), a monumental "History of Science" (31 volumes) (with his distinguished brother, Dr. Edward Huntington Williams) and other medical and scientific works too numerous to mention.

The Author

Dr. Henry Smith Williams has spent five years in the investigation and study of the problem presented in the present volume which is, incidentally, the first complete and most authentic exposition of the subject of narcotic addiction in its various phases in the United States ever published. What is particularly significant, in this connection, is the fact that the United States is the only country in the world, outside of China, where narcotic addiction is a serious problem—and that for reasons well given by the author in these pages.

THE PUBLISHERS

Prologue

THE illicit drug traffic—quite literally a billion-dollar racket—is essentially an American institution. There is nothing like it elsewhere in the world.

It is the direct outgrowth of a Federal Law—called the Harrison Act—which, paradoxically, has never been enforced.

What *has* been enforced—with dumbfounding effects—is a Code developed without warrant of law by subordinates of the Treasury Department (Commissioner of Internal Revenue, Deputy Commissioner of the Narcotic Division of the Prohibition Unit, Commissioner of Prohibition) and fostered in later years by the Commissioner of Narcotics.

This Code directly developed and effectively maintained the illicit drug racket, in all its ramifications. The story of this development constitutes one of the weirdest chapters in American history, and the very finest example of the amazing paradoxicalities of Bureaucratic Government. Emanating from an executive department, without legislative warrant, it was unconstitutional (N R A decision) in its essence. It was doubly unconstitutional because it imposed exactions that the Federal Congress itself has absolutely no power to impose (A A A decision).

But this did not prevent the Narcotic Code (herein for cause dubbed the "Blackmail Code") from operating effectively, for (a) the establishment of the billion-dollar illicit drug traffic; (b) the transformation of a vast company of law-abiding citizens into outcasts and hopeless derelicts and criminals; and (c) the persecution, even unto death, of hundreds of thousands of pitiful victims of disease, who were denied—as no other

group of unfortunates in all history have been denied—the solace of medical attention.

To the best of my knowledge and belief, the pages of this book contain the first record that has ever been printed in any medium of the bald truth about the origin and development of these Code-engendered, Law-defying Government-fostered atrocities. Were it not an adequately documented record, it might well be thought unbelievable. It *is* unbelievable. Yet it is true; and its documented validity is doubly attested by the consideration that no flight of imagination, no inventive inspiration, could have conceived a situation of such stupid fantasticality.

"Some day," said an editorial in *American Medicine* a few years ago, "the whole sordid story of the exploitation of the drug addict will be written."

This is that story.

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By Edward Huntington Williams, M.D.

Reprinted from

Congressional Record

SEVENTY-FIFTH CONGRESS, THIRD SESSION

Vol. 83 WASHINGTON, WEDNESDAY, JUNE 15, 1938 No. 123

HOUSE OF REPRESENTATIVES

WEDNESDAY, JUNE 15, 1938

(Legislative day of Tuesday, June 14, 1938)

An Investigation of the Narcotic Evil

EXTENSION OF REMARKS

OF

HON. JOHN M. COFFEE

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 14, 1938

A DISCUSSION OF HOUSE JOINT RESOLUTION 642, TO PROVIDE FOR A SURVEY OF NARCOTIC-DRUG CONDITIONS IN THE UNITED STATES BY THE PUBLIC HEALTH SERVICE. INTRODUCED BY MR. COFFEE OF WASHINGTON, APRIL 7, 1938. REFERRED TO THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE AND ORDERED PRINTED

Mr. COFFEE of Washington. Mr. Speaker, this bill proposes an appropriation for making a survey of narcotic-drug conditions in the United States.

A question naturally arises as to why such a survey is desirable. The answer cannot be given without first gaining an inkling of the narcotics situation. We are especially concerned with the economic aspects of the situation.

ECONOMIC ASPECTS OF NARCOTICS

It is estimated by the American Association on Drug Addictions, of Seattle, that the annual cost to the taxpayers of this country of narcotics addiction, chiefly opiate addiction, is of the order of $2,735,000,000, or about $80 per family. It is claimed that this is a needless burden imposed on the people, not by conditions inherent in the problem of drug addiction, and not by the operation of law, but by the mistaken interpretations of law made by the Federal Narcotics Bureau.

If this claim is justified, the Narcotics Bureau stands as the costliest bureau or governmental department in the world, and the Commissioner of Narcotics ranks as far and away the costliest man in the world. He and his predecessor, a prohibition officer, have been in control of the narcotics situation for 17 years.

PURPOSE OF PROPOSED INVESTIGATION

The purpose of the investigation proposed in this bill is to evaluate these claims, with the expectation that if they are found valid, action will be taken speedily to reform the evils of the situation.

TWO TYPES OF LAWS TREATING OF NARCOTICS

There are two types of Federal laws supposedly governing the narcotics situation: (1) An import law providing that crude opium and coca leaves may be imported under certain conditions, but forbidding the import of any refined products or alkaloids of either drug; and (2) the Harrison Special Tax Act of 1914, commonly called the Harrison Narcotic Act, which imposes a head tax on all legitimate handlers of narcotic drugs, and (as revised in 1918) a special tax also on the narcotic drugs manufactured from the imported crude substances.

The first of these laws I shall not consider at the moment beyond pointing out the obvious extreme difficulties encountered in the endeavor to prevent smuggling of products of such small bulk as the alkaloids, morphine, heroin, and cocaine, the dosage of which is measured in grains or fractions of a grain. In another connection it will be noted that the opium alkaloids in particular are admittedly smuggled into the country constantly to the extent of many tons annually. It will be noted also that the smuggling racket was a direct outgrowth of the operation of the other narcotics law, the Harrison Act.

HARMFUL EFFECT OF HARRISON ACT

In examining the Harrison Special Tax Act we are confronted with the anomaly that a law designed (as its name implies) to place a tax on

certain drugs, and raise revenue thereby, resulted in reducing enormously the legitimate importation of the drugs in question, while developing a smuggling industry not before in existence. That, however, is only the beginning. Through operation of the law, as interpreted, there was developed also, as counterpart to the smuggling racket, the racket of dope peddling; in a word, the whole gigantic structure of the illicit-drug racket, with direct annual turn-over of upward of a billion dollars.

PITY THE POOR ADDICT

Incidental effects were the persecution of perhaps a million victims of the diseased condition known as drug addiction, the great majority of whom had been law-abiding, self-respecting, self-supporting citizens, but who now became human derelicts and were thrust by thousands into jails and prisons simply because they could not legally secure the medicine upon which depended their integrity of mind and body. There were no narcotics prisoners in Federal prisons prior to the passage of the Harrison Act. Ten years later, more than one-third of all convicts in Federal prisons were narcotic cases.

The total number of such Federal narcotic prisoners during the period since the Harrison Act began to operate as potent maker of criminals is of the order of 75,000, with aggregate prison sentence of upward of 100,000 years. No other statute ever operated to make criminals on any comparable scale.

MISINTERPRETATION AT FAULT—NO INHERENT DEFECTS IN BILL

Let me repeat, however, that no such dire effects were inherent in the Harrison Act itself. The social and economic disaster involving an army of sick people came about through bureaucratic action which is claimed to have been based on misinterpretation of the law—misinterpretation which is alleged to have set at defiance the clear decisions of the Supreme Court—illustrating incidentally the often overlooked fact that the high tribunal is purely advisory in function, having no power whatever to enforce its decisions.

COURTS HOLD HARRISON ACT TO BE A REVENUE BILL

Let us get down to cases. The essence of the Harrison Act is the provision that no slightest modicum of any narcotic drug shall get to the ultimate consumer in any manner whatsoever except at the hands of a registered physician—we may overlook dentists and veterinary surgeons for the present purpose. There is no reference to the uses of narcotics in the law, and no reference to drug addicts or drug addiction. The Su-

preme Court has ruled—Linder case, 1925; Nigro case, 1928, and so forth—that the law is a pure revenue measure, and that Federal law has no control over the practice of a profession—reiterated, with specific citation of Linder case, in the A. A. A. decision of 1936.

INHUMANITY TO ADDICTS

The Narcotics Bureau ignores these decisions and assumes authority to prevent physicians from even the attempt to cure narcotic addicts unless the patients are under forced confinement. The addicts number, by the very lowest estimate, at least 100,000. The institutions that will receive them as patients are almost nonexistent. It follows that the prohibitory mandate of the Narcotics Bureau effectively denies treatment to the vast majority of narcotic addicts.

A GREAT INJUSTICE OF MODERN TIMES

It is believed that this is the first instance in all history of the denial of medical treatment to a class of citizens of whatever status or capacity. The fact that the Supreme Court has declared that narcotic addicts are diseased and proper subjects for medical treatment makes the action of the Narcotics Bureau peculiarly paradoxical. The paradox is emphasized by the further fact that the Federal Government has erected a beautifully equipped hospital for treatment of narcotic addicts at Lexington, Ky. Most of the patients are first condemned to prison, then transferred to the hospital. Voluntary cases may also be received. But the total capacity of the institution is only about 1,000. At least a hundred such institutions would be required to meet the needs of the existing addict population—5 or 10 times that if the newer estimates of that population are valid.

ADDICTION, ONCE DEVELOPED, IS CHRONIC

The erection of a hundred or a thousand such institutions, however, would by no means solve the narcotics problem. Addiction, once developed, is a very chronic condition. It is admitted by the authorities, including the narcotics commissioner, that very few "cures" result from incarceration for a 1-year period. It has been suggested that a 5-year segregation is the least that can be expected to restore the average addict. The idea of incarcerating even a hundred thousand, let alone a million, unfortunates for a term of 5 years is rather startling—especially considering that they are sick people, for the most part of average respectability and moral status, not markedly handicapped by their infirmity.

UNIVERSAL IMPRISONMENT OF ADDICTS IMPOSSIBLE, HEARTLESS, AND UNSOUND

In any event, such effort would be mere temporizing. Even if the miracle of curing all existing addicts were effected in 5 years, we should

be no better off, because the dope peddler, deprived of his present market, would instantly set to work to develop a new market, and a perennial new crop of addicts would be in evidence.

THE REMEDY IS SIMPLE

But what is the alternative? Fortunately, the answer is simple. If the Harrison Act were allowed to operate as was designed, all victims of drug addiction disease—"narcotoxia" it is technically termed—would come under medical supervision; and, on prescription, would be supplied with whatever medicine they need at slight cost at the drug stores. Morphine which the peddler sells for a dollar a grain would be supplied, of pure quality, for 2 or 3 cents a grain. The peddler, unable to meet such a price, would go out of business—the illicit narcotic drug industry, the billion-dollar racket, would automatically cease to exist.

That much may be stated with absolute certainty. Almost as certain is it that the army of narcotics derelicts would be reduced to the vanishing point. Courts would cease to be crowded with delinquents who owe their downfall to the necessity of meeting the dope peddlers' exorbitant demands. Jails would be emptied; Federal prisons would lose a quarter or a third of their population. The billion dollar—or two and three-quarter billion dollar—tax on the public would be eliminated.

Why should there be any argument against permitting the law to operate, since such beneficent results seem inevitable? Here we come to the crux of the matter. The opposition comes from a small coterie of persons in authority, who are in position to benefit by the status quo. These persons will be brought into the open by such a congressional investigation as this bill proposes. There will then be opportunity to subject to official scrutiny the records of these opponents of law reform.

LET US FIND OUT THE CAUSE OF THIS SITUATION

Specifically, there will be opportunity to question the Commissioner of Narcotics—and to observe how he may endeavor to justify the activities that cost the American people not far from $3,000,000,000 a year, and give the Commissioner himself status as the costliest man in the world.

It seemed necessary to make these general comments, if for no other reason, to explain why this bill (H. J. Res. 642) proposes to entrust the investigation and survey of the narcotics situation to the Surgeon General of the United States Public Health Service, and not to the Bureau of Narcotics.

THE HARRISON LAW AS INTERPRETED

The Harrison Special Tax Act of 1914 required all handlers of narcotic drugs, opium and coca leaves and their products and preparations,

to register with the Commissioner of Internal Revenue, and pay an annual tax of $1. Narcotic drugs could be transferred only on presentation of a signed order form issued by the Commissioner of Internal Revenue; but, physicians, dentists, and veterinary surgeons were exempt from this requirement, and druggists could issue narcotics on the prescriptions of these exempt professional persons; provided only that the prescriptions were issued for legitimate patients, "in the course of professional practice only." The writers of prescriptions were to keep duplicates or copies in their offices; and the original prescriptions, after being filled, were to be kept for 2 years on file at the pharmacy. No record need be kept by the practitioners of narcotic drugs directly administered to patients whom they professionally attended.

That is all. There is no mention of the uses of narcotic drugs; no reference to addiction or any other malady or condition, and no suggestion as to meaning or interpretation of the words "legitimate," "patient," or "professional practice." Nor is there the slightest hint as to the qualifications that render any person eligible to register as a physician, dentist, veterinary surgeon, or pharmacist. Presumably the lawmakers fully understood that professional eligibility to handle drugs is a matter for State supervision and control, and one over which Federal law has no jurisdiction. It is not even specifically stated that a physician may use his own prescription blanks; it is merely stated that he is not required to use the printed order forms issued by the Commissioner of Internal Revenue, which all other handlers of the drugs must use.

LATER CHANGES IN LAW AS INTERPRETED

Subsequent amendments (1919 and 1926) modified the annual head tax (establishing a graded scale ranging from $24 to $3, and then shifting the minimum—for physicians—back to $1), and provided for a stamp tax of 1 cent an ounce; no drugs to be dispensed to the ultimate consumer except "in or from" a package bearing the revenue stamp. But the amendments did not otherwise concern the pharmacist or the physician, which is equivalent to saying that the Harrison Act, in its relation to the professional activities of the persons who alone are authorized to dispense narcotic drugs to the consumer remains absolutely unmodified since its enactment in 1914. Any changes in operation of the law have not been due to legislative action, but to judicial or bureaucratic interpretation. These changes have been so notable, however, that the net result has been, as to every essential, almost diametrically opposed to what the proponents of the act planned and hoped for.

FACTS OF NARCOTICS PROBLEM ARE DISQUIETING

For example, (1) direct revenues have decreased instead of increasing,

and an indirect burden of cost has been multiplied a hundredfold; (2) smuggling of narcotic drugs has increased from negligible pounds of smoking opium to scores of tons of morphine and heroin; (3) a negligible group of peddlers of cocaine in prohibition districts has become an army of peddlers of morphine and heroin; (4) a scattered company of drug addicts, a majority of whom were respectable, self-supporting citizens, neither financially nor morally hampered by their infirmity, has become a multitude of derelicts, victims of the dope peddler and the narcotic agent, and denied all medical attention; (5) whereas formerly a considerable number of addicts were cured by sedulous medical treatment, such treatment could no longer be attempted, and every case of addiction became practically hopeless from inception (including large numbers of soldiers returned from the Great War); (6) the dope peddler, whose very existence was due to the law as interpreted, was and is naturally diligent to increase his market so that the addict population has probably doubled, if not tripled, since the Harrison law was enacted; (7) under stress of necessity, being denied legitimate access to the medicine they require, narcotic addicts as a class become law breakers (since every purchase constitutes a felony), and soon the jails and prisons were crowded with narcotic prisoners (in Federal prisons alone narcotic cases advanced from none in 1915 to 2,569 in 1925); physicians were so hampered in their use of the most indispensable of medicines that most of them refuse to treat drug addicts even for maladies other than addiction disease, yet, even so, upward of 25,000 physicians have been reported for criminal violation of the Harrison Act, and about 5,000 have been convicted in Federal courts, and either heavily fined or imprisoned, the irony of the situation being enhanced by the fact that, with rare exceptions, these convicted physicians had assiduously attempted to conform to the law and to every regulation of the narcotics authorities.

Such have been some of the unpredicted consequences of operation of the Harrison Act, as interpreted.

AIMS OF MY PROPOSED INVESTIGATION

Perhaps a few words should be added about the specific aims of the proposed investigation, as stated in the resolution now before the House —line 10, page 2, to line 10, page 3. Information is desired as to—

(a) The extent of unlawful activities with respect to narcotics and the number of persons connected with such activities.

NARCOTICS WIDESPREAD TINCTURING OF OFFICIAL LIFE

Comment: The extent to which unlawful activities in the distribution of narcotics have invaded official life is cogently suggested by several recent happenings:

HANSON AFFAIR IN NEVADA

First. The arrest, prosecution, and conviction of the chief Federal narcotics agent for the State of Nevada—Chris Hanson—and a confederate who was formerly a revenue officer, for direct dope peddling and connivance with a gang of Chinese racketeers in June 1937. Hanson was sentenced to 10 years in the Federal penitentiary at McNeill Island and a fine of $9,000. It is to be noted that Hanson was chief Federal narcotics agent at Los Angeles, Calif., at the time of the arrest and prosecution there of physicians, through which the closure of the beneficent narcotics clinic of the county medical association and board of health was effected—and the 75 rehabilitated patients thrust back into the hands of the dope peddlers. Incidentally, it should be noted that the United States attorney who cooperated with the narcotic agents in the prosecutions in question was ousted from his position for his action in this affair, along with the two assistants directly involved, one of whom was held for contempt of court because of his reprehensible actions. The character of the associates of the Federal narcotics agent is further evidenced by the arrest and imprisonment of another officer—investigator for the State medical board of examiners—who had active share in the frame-up of clinic physicians.

It is perhaps not without significance to note that no Federal bureau or agency had any share in the initial investigations through which Chief Federal Agent Hanson and the former customs officer were entrapped at Reno. On the other hand, the Commissioner of Narcotics took an active hand in the questionable proceedings at Los Angeles which led to the arraignment of the assistant United States attorney for contempt of court. And he is on record as regarding that case as the most important in the history of the Narcotics Bureau, with its record of many thousand cases. His dubious partisanship amounted to effective championship of the dope peddlers—and seems inexplicable on any other basis.

ACTION AT ZURICH

Second. The demonstrated participation of Federal narcotics agents in the illicit drug racket is suggestively supplemented by the reported arrest at Zurich May 30, 1938, of a former Peruvian diplomat said to be the head of a colossal international dope ring. The incident is perhaps only a grandstand play—in view of the fact that the authorities of the League of Nations are conceded to have known the names of the important narcotics smugglers for years past, and have argued among themselves as to the advisability of warning various governments against them. But whatever the motive for the present arrest, the fact that the suspect

is a former diplomat gives authenticity to the recently published statement of a French criminologist that enormous quantities of contraband narcotics are shipped into America as part of the baggage, exempt from inspection, of officials in the Diplomatic Service.

Third. Whatever the manner of smuggling, the aggregate amount of narcotics—in particular morphine and heroin—involved in the illicit traffic is enormous. At a congressional hearing on the Porter bill, which resulted in the act authorizing the building of two narcotics hospitals—one now in operation at Lexington, Ky.—Colonel Nutt, then in charge of the Narcotics Division of the Prohibition Bureau, estimated the addict population at a minimum of 100,000 and the daily average ration of morphine at 8 grains. He expressed the opinion that all but a negligible quantity—1 or 2 percent at most—of the legitimate supply of narcotics was handled legitimately by physicians, admitting, therefore, that practically the entire supply of the addicts was smuggled into the country, and sold, at $1 a grain, by dope peddlers.

COLONEL NUTT'S TESTIMONY

He made no estimate of the number of such illicit traffickers. But a simple calculation shows that by his estimate the morphine, or its equivalent, consumed by 100,000 addicts on the daily 8-grain basis would amount to 292,000,000 grains a year, or more than 20 tons. Recall, please, that this was a minimum estimate. It is perhaps not very important to find out how many peddlers are required to dispose of such quantities of the illicit product. But it is of salient importance to recall that there was no smuggling and no peddling of opiates before the passing of the Harrison Act, and that there would be none now if addicts were permitted, under medical supervision, to secure the drug they imperiously need, at a legitimate price at a pharmacy.

ENORMOUS PROFIT IN DRUG PEDDLING

Smuggling and peddling of drugs are carried on for profit. There would be no market for morphine at a dollar a grain if it could be secured, of pure quality, legally, for 1 or 2 cents a grain as it could be before the prohibitive law was enacted; and as it still could be if the narcotics authorities did not substitute a bureau created "regulation" for Federal law.

One salient purpose of the proposed investigation will be to ascertain why certain narcotics authorities perennially champion the "regulation" which supports the dope peddler and keeps the narcotic racket in being.

So much for the first-suggested subject for investigation. The second (b) is complementary, concerning the number of addicts in the United

States, with further question as to the availability of various types of treatment.

CAN ADDICTS SECURE ADEQUATE MEDICAL TREATMENT?

Here the thing of real importance is suggested in the concluding clause. It would be of interest to know the number of addicts—estimates range from 100,000 to more than a million—but the really vital question is, whether addicts, be they few or many, are given opportunity to secure medical treatment—such opportunities as are open to the victims of every other type of malady or perverted condition, regardless of whether we term it disease or habit or perversion.

That statement is perhaps not quite accurate. As a matter of fact, we know that victims of narcotics addiction (unlike alcohol addicts or nicotine addicts) are not permitted to receive treatment like other sufferers. The question at issue is, Why are they not permitted this elemental right?

SUFFERER SHOULD BE MERCIFULLY HANDLED

The obvious answer is that if this were permitted, the dope peddler would be put out of business, and the entire illicit drug racket would vanish. But that answer only leads to the question: Why should persons in authority wish to keep the dope peddler in business and the illicit drug racket in possession of its billion-dollar income?

It will be obvious, I think, that this is the really significant question at issue. I submit that an official answer to that question would be not merely of interest, but of truly vital importance to every American citizen. If we, the representatives of the people, are to continue to let our narcotics authorities conduct themselves in a manner tantamount to upholding and in effect supporting the billion-dollar drug racket, we should at least be able to explain to our constituents why we do so.

Introduction

Public Enemies in High Places

THE phrase "billion-dollar racket" is familiar; but there is probably only one enterprise that fully justifies the name. That is the Illicit Drug Traffic, or "dope" racket. This apparently does have a direct turnover of upward of a billion dollars a year; with indirect toll—equally significant from the standpoint of the taxpayer—of from two to five billions.

The word "billion" is as easy to pronounce as "million." Neither word has very definite connotations in the minds of most of us. The words must be split into smaller factors to become really intelligible. For present application, this analysis may help:

The billion-dollar turnover of the "dope" industry is estimated on the assumption of half a million addicts, using six grains of narcotics (mostly morphine or heroin) daily, at one dollar a grain (totalling $1,090,000,000 for the year).

The daily turnover is 500,000 (number of customers) times $6, or $3,000,000. That means $600,000 an hour for five hours of every day in the year; or $10,000 per minute.

At last we get down to figures that begin to have a meaning. Ten thousand dollars is a very tidy sum. It is, for example, the annual salary of a United States Senator or Representative. And this is the sum that the "dope" peddler exacts every minute of every five-hour day from the drug addicts who have no other way to secure the drug that their infirmity makes absolutely essential to their comfort, well-being, or even lives. The most eager army of customers that ever merchant was

blessed with—customers that come grovelling, begging to be allowed to purchase two cents' worth of goods for a dollar. Customers that the Federal Government has provided him, and assures him, by forbidding them to buy in any other market.

Was there ever before in all the world—even in this racket-ridden land—so sweet a Racket?

Such is the Law-engendered and Government-protected Racket that I purpose to describe in this book. In so doing, I enter a virgin field. But I have explored it sedulously for many years, and I offer a fully-documented record. The story concerns, not merely loss of money, as might mistakenly be supposed from the illustration just given, but far more importantly, the persecution of many hundreds of thousands of sick people, under aegis of Government authority, not merely in contravention of sympathy or pity or compassion, but in defiance of Law—in contempt of the Supreme Court, and of the Constitution of the United States.

The full exposition of the shameful and humiliating record is the purpose of this book. The active coadjutors of the dope ring, as we shall see, include authorities of the Bureau of Narcotics (upheld by the Secretary of the Treasury); U. S. District Attorneys (upheld by the Attorney-General of the U. S.); and Federal District Judges (upheld by Circuit Judges). I do not believe that one man in ten, of these coadjutors (but for whose cooperation the illicit drug industry would disappear as rapidly as it was developed) receives a dollar directly from the "dope" smuggler and peddler. I believe that at least nine out of ten of the coadjutors of the racketeers are unwitting coadjutors. Or at any rate four out of five.

Details, however, are not material. The essential thing is that the billion-dollar racket, in all its ramifications, is the direct outgrowth of illegal activities of Government officials whose supposed function is to sustain the Law. The entire illicit drug

situation—involving grave medico-legal, social, economic, and humanitarian maladjustments—is not merely an illustration, but *the supreme and incomparable example, of government by unconstitutional bureaucratic Code in defiance of Federal Law.*

The proponents of this illegal Code—Government officials though they were and are—must be ranked as public enemies compared with whom the loudly-berated dope smuggler and peddler are minor offenders. The very existence of the illicit drug traffic is conditioned solely on the illegal activities of the official public enemies in question. To speak of a puny Capone or a futile Dillinger as "Public Enemy No. 1" while these big boys are at the helm, is like suggesting that gnats are more venomous than rattlesnakes.

Does this seem a strangely paradoxical statement? You will not challenge its validity, I think, after you review the evidence presented in the ensuing pages. You will presently understand why I am accustomed to speak of the period (1915-1938) of the American Inquisition—the era of persecution of sick people in the United States by Government Edict or Code—as a strange chapter of *Medieval* history.

My reason for dubbing this unconstitutional Edict the "Blackmail Code" will be increasingly evident as we proceed.

BOOK I

Cruel, But Not Unusual

CHAPTER I

The American Inquisition

THERE are only two countries in the world where the use of narcotic drugs is regarded as a social and economic problem of particular significance. These countries are China and the United States of America. These are also the countries where the most strenuous efforts have been made to suppress the illicit traffic in narcotics by law. In China, at various times, the use of opium has been a capital offense. In America we have not openly reached quite that stage, but we do make unauthorized possession of drugs a felony, punishable with five years' imprisonment.

And, in a curiously Pharisaical way, we exact the death penalty far more often than it has ever been exacted in China.

On the economic side, the net result of the prohibition of opium in China is that the production of opium there is now estimated at upward of 15,000 tons a year—fifty times the total world-need, as calculated by the International Conference at Geneva.

The net monetary result of narcotics prohibition in America is that the illicit drug traffic costs the country upward of a billion dollars a year. We are known as furnishing the chief market for smuggled narcotics, of which the supply in the western world is estimated at five times the amount used medicinally. Our courts are jammed with narcotics cases. Narcotics prisoners are packed like sardines in our jails and prisons. "Dope" smugglers and peddlers have a direct annual turnover of the order of three million dollars a day, or $1,090,000,000

annually. By conservative estimate, there are 500,000 narcotics addicts—popularly known as "dope fiends"—who depend exclusively on the peddler for the drug that they cannot do without.

No other country of the western world can make anything like a comparable showing.

Why this unwelcome supremacy? The answer is not hard to find. It is writ large in official records. The illicit drug traffic, with all its ancillary evils, was developed in this country by Federal Law, as interpreted by Federal authorities of what is facetiously termed narcotics "control." The genesis may be traced unequivocally in a few sentences:

The basic law is commonly known as the Harrison Narcotics Law. It was passed by the Congress on December 17, 1914. By title and on its face, it was a "pure revenue measure," and the Supreme Court affirmed, by decision in the Linder case, 1925 (cited also in the famous A A A decision of January 6, 1936), and sundry others that such is its status, and its only status under the Constitution. But the Commissioner of Internal Revenue held that the law has a hidden purpose. He held that the law was designed to control drug addiction (though the law itself makes no reference to addiction), and his rulings made it encumbent on revenue officers to check narcotics prescriptions with reference to the quantities of narcotic drugs received by individual consumers.

This idea was followed up by the revenue officer directly in control of enforcement, the Deputy Commissioner at the head of the Narcotics Division of the Prohibition Unit of the Treasury Department (subsequently known as the Deputy Commissioner of the Prohibition Bureau, a position abolished when that Bureau was superseded by the Bureau of Narcotics, in 1930). These titles are of interest, as showing the complexion of the narcotics-enforcement personnel. The point of present

significance is that from this source, in 1921, came the little "advisory" leaflet which was in effect a Code, allegedly based on the Harrison Law, but in reality far transcending the power of that statute, which was destined to transform the narcotics situation in America.

This little leaflet was to create the illicit drug traffic; to raise up an army of dope smugglers and peddlers; to increase the company of drug addicts; to change thousands of self-supporting, law-abiding citizens into outcast derelicts and petty criminals; to crowd court calendars and jam the corridors of prisons; to inaugurate an era of persecution of sick people; and to impose on the country a tax-burden of at least a billion dollars a year.

Quite an imposing array of effects, to result from the issuance of a four-page leaflet by a minor revenue officer and prohibition agent. But is it not traditional that great oaks from little acorns grow?

Let us not speak in parables, however. Let us ask just how the little leaflet did its miracles. You would never guess the secret from reading the text of the missive itself. This merely states that the revenue officer does not approve of the medical treatment with narcotics of patients who are addicted to the habitual use of these drugs, unless these patients are forcibly confined in institutions—hospitals, sanitariums, or jails. He does not believe that the treatment of ambulatory patients is likely to result in their permanent cure. So he frowns on such treatment.

That was about all. It does not seem much. But the sequel was to show that it was a-plenty. A century—or ten centuries—from now, that little Code will be among the wonder-documents of history.

But when it was issued, no one—including the prohibition agent himself—had more than the vaguest inkling of its sig-

nificance. The agent was not a physician, of course. He personally cannot have supposed himself an authority on drug addiction. But he had the advice of the President of the American Medical Association, and was backed by a resolution of that Association, which expressed doubts as to feasibility of curing addiction while the patients are not under restraint. Overlooking the fact that the average physician knows practically nothing about drug addiction or its treatment, the opinion was valid enough. At all events, we need not challenge it at the moment.

The thing to be noted does not involve argument as to theories of drug addiction or cure. It involves a simple matter of fact—which unfortunately the revenue agent and the physicians who counseled him left quite out of account.

This is the fact that no institutions were available in which the great army of narcotics addicts could be received for treatment. General hospitals will not take them; sanitariums that will take them are few, far between, and expensive; and jails, even if they were considered good places for treatment of sick people, were already overcrowded.

The enthusiasts further ignored the circumstance—known to the few experts who knew anything at all about the subject—that permanent cure of any case of addiction calls for many months of careful control, followed by years of supervision. And they seemed to pass lightly over the practical circumstance that a major part of all narcotics addicts were engaged in gainful industry, and could not very well afford to lie by for a term of months, even if sanitariums or jails had been available to house them.

If we recall that the only official figures available at the time when the merry little Code was put forth appraised the number of addicts in the country as "in excess of a million," the real flavor of the jest will begin to be apparent. (This appraisal was


HE CHEATED ME!
HE CUT MY PROFITS!
HE ROBBED ME!
TORTURE
NARCOTIC RACKET
THE
BILLION DOLLAR
BUZZARD
HE KEEPS FOLKS FROM SUFFERING
CRIMINAL!! HE SAVED A WOMAN'S LIFE
SLIM
EDWARD HUNTINGTON Williams, M.D.

made by a special Committee, appointed by the Secretary of the Treasury. It recorded the million addicts as being in all walks of life, and three-fourths of them as gainfully employed. A large number were housewives.)

Under ordinary circumstances, the slight inconsistencies involved in the Prohibition Agent's Code might have served to add a little of the spice of life to a post-war generation that needed to learn to laugh again. The word might have been passed about that Colonel Nutt (that was the agent's symbolic name) would have his little joke, and things might have gone on as before—which would have been well enough, there being then no narcotics problem of significance in this country, any more than in other countries of the Occident.

But in reality Colonel Nutt was not the joker that his little leaflet seemed to reveal. He was in dead earnest—or should we say deadpan earnest? I frankly disbelieve in reincarnation; so I shall not suggest that the spirit of Torquemada or of Cotton Mather bloomed again in the guise of Colonel Nutt. Yet the sequel to the simple edict of the revenue agent was of such character as to make good old Torquemada turn in his grave with envy (if such feats are possible), and to show up the Reverend Cotton Mather as a sideshow piker.

For the Edict of Nutt had to do, as we have just seen, with a million victims; whereas Torquemada dealt only with thousands; and with only eighteen or twenty thousand casualties; and piker Mather's hanged witches were scarcely more than a negligible baker's dozen.

How the Edict of Nutt over-shadows these petty records, we shall learn presently. First, however, let us follow up the sequence of events chronologically; noting what happened, and why.

The salient condition that confronts us is the existence of a vast company (never mind the exact number for the moment)

of persons who are addicted to the daily use of drugs that they cannot abandon without being subjected to physical and mental torture. A considerable percentage of these, if forcibly deprived of the drug, will die. Many more will come deadly close to the danger line. All will suffer intensely. Deprivation of the drug will no more cure them permanently of the craving for it, than shutting a duck away from water will cure the duck of the swimming habit, or urge to swim.

But now suddenly comes a "suggestion" that these people shall be deprived of all narcotic drugs. And very soon the suggestion is given the character of a mandate. The Edict of Nutt "advised." But very soon it was known that any physician or druggist who failed to heed the "advice" was likely to be arrested, and vigorously prosecuted in a Federal Court. And presently it was known that there were some Federal judges who would interpret the Prohibition agent's Edict, or Code, as Federal Law.

More than 110,000 arrests for alleged violation of the Harrison Narcotics Law were made in the years 1921-1923; and a very large proportion of these were cases, not of violation of the Law, but of infringement, real or alleged, of the Code. So many convictions were secured that very soon the medical profession came to believe that the Federal Law did, indeed, prohibit them from treating all cases of drug addiction disease. Every wise physician heeded the warning, hardened his heart.

What then? Why, simply the happening of the inevitable. Here were tens of thousands of people, in every walk of life, frantically craving drugs that they could in no legal way secure. They craved the drugs, as a man dying of thirst craves water. They must have the drugs at any hazard, at any cost.

Can you imagine that situation, and suppose that the drugs would not be supplied? It would be childish, nay imbecile, to answer that question in the affirmative.

The Prohibition agent and his colleagues who were responsible for the Edict were not children; nor, presumably, were they imbeciles. It follows that they must have known that their Edict, if enforced, was the clear equivalent of an order to create an illicit drug industry.

They must have known that they were in effect ordering a company of drug smugglers and peddlers into existence.

Few laws have ever been enacted that produced *any* effect as surely as the Edict of Nutt produced an army of men to smuggle narcotics into the United States and sell them surreptitiously to the sufferers from drug addiction. For convenience, we shall speak of this Edict as the Narcotics (or Blackmail) Code.

There must have been an intermediate period, before the machinery of smuggling could be got into full operation, when a vast number of the addicts suffered excruciatingly, because their needs could not be met. A way could not instantly be found to import two tons a month of morphine, through a barricade of Inspectors not yet subsidized. Probably ten per cent of the addicts died of deprivation. Experience shows that something like that proportion, cannot survive the strain of deprivation, unsupported by medical attention.

That would mean the death of upward of a hundred thousand sufferers, if the official estimate of a million addicts be accepted. At the lowest estimate that anyone has ever made, it would mean ten thousand deaths. (Recall meantime that the victims of the guillotine during the Reign of Terror in Paris numbered less than two thousand.) Here, then, was a Reign of Terror and an Inquisition combined. And it was to last, not for a term of months, but for at least seventeen years. There is nothing else quite like it in history.

Even after the army of smugglers and peddlers was fully established, to meet the need created by the Edict, or Code, the

time of suffering for the victims was by no means over. In the first place, it would have been difficult to insure a steady and invariable supply of drugs, to meet so vast a demand, even if there had been no monetary drawback. But, in addition to this uncertainty, there was the fear ever-present in the minds of ninety-nine addicts in a hundred, that he or she would not be able to get the money to meet the peddler's exactions of the morrow.

Needless to say, the peddler did a cash business only. Needless to say, also, that his prices were extortionate. The value of morphine, at a drug store, might be two or three cents a grain. The peddlers soon standardized the product at one *dollar* a grain. And at that the drug might be diluted or of poor quality—or it might even be substituted wholly with some utterly valueless product like sugar of milk.

The average need of an addict of full development is of the order of ten grains a day, even under favorable conditions. Under conditions of stress and uncertainty, with attendant worriment, the need is greater. Many addicts require fifteen, twenty, even thirty or forty grains a day—in some exceptional cases, two or three times even these excessive quantities.

But how was the average addict—revealed by the official census as an average person—to secure ten or fifteen dollars a day, to pay for the drug he imperatively needed? Not for a single day, mind you, but each and every day, month after month and year after year. With no possible days of intermission;—for the drug addict is not like the dipsomaniac, able to abstain for considerable periods. He must have a portion of the drug *every few hours;* several times a day.

How was he to get ten or fifteen dollars, over and above the cost of food, shelter, clothing for himself and family, each and every day—say $3,650 to $4,000 a year?

Can you guess the answer? The average addict could not get

such a sum by any ordinary means. He could not get it by any honest means. Then he must get it by dubious means—he must beg, borrow, forge, steal. No choice remained. Being an average citizen, he was not a criminal, not an anti-social being at heart. And he had double incentive to avoid conflict with the law, because incarceration would mean deprivation of the drug on which his health and sanity depended.

But the frenzied craving gave him no choice. Already he was a felon in the eye of the law, because he bought the drug of a peddler who had no license to sell drugs and could obtain none. It would be only another step, when money utterly failed, to resort to peculation.

So the army of harassed addicts became an army of law-breakers perforce, even if abundantly supplied with money. Lacking abundant means, they became actual breakers of the Common law.

Seldom in history of any people has a single Edict produced such an army of law-breakers as the Edict of the Prohibition agent evoked. The United States Government, as represented by its Revenue officers, became the greatest and most potent maker of criminals in any recent century.

The American Inquisition thus inaugurated will stand out for all time among the great epochs of persecution. Speaking as an historian, I venture to predict that, even within the present century, it will be regarded as an event of far greater significance for America, and entitled to a larger place in historical annals, than the event that we now speak of as the World War.

The direct loss of life within a year was probably double the total loss of life in the American army in that War. And the soldier's death was of the two less hideous, because the ambulance corps was usually at hand to give the heroic combatant nepenthe with the self-same drug—morphine—for lack of which the despised addict perished in agony.

In attic or gutter these victims of fanaticism died unpitied. And the Torquemadas who wrought the havoc, plumed themselves on their victory as censors of public morals, and were acclaimed as champions in the great battle against the fearsome ogre which they named with bated breath the "Dope Fiend."

Yet in truth this Narcotics Addiction Ogre, as revealed in the public press and combated by the fanatics, had the same

Dr. Hawkins was sentenced to prison for giving this tubercular patient morphine. Then the patient died of hæmorrhage for want of morphine. The Appellate Court said, in effect, that the joke was on the Doctor—and sustained the sentence. (Fifth Circuit, 1937.)

degree of substantiality as the Demons of Torquemada and the witches of Cotton Mather. As a public menace, the twentieth century phantom rivals the windmills of Don Quixote.

In the heyday of the Spanish Inquisition, a physician stood beside the victim in the torture chamber, to call a halt if the "questioning" threatened the life of the heretic.

But the modern heretic—the narcotics addict—was denied all medical aid. Not only in private life but in hospitals, with physicians standing at the bedside, addicts were allowed to die in agony—because no one dared to solace or rescue them with a dose of the interdicted drug.

The records of this American Inquisition make a strange chapter of medieval history—of the years 1914-1938. As I said before, there is nothing quite like it—nothing quite so unbelievably fatuous—in the entire range of antecedent history.

You do not believe this? You cannot believe it? I challenge you to read the ensuing pages and then to point out any era of persecution, of any age or race, in which man's inhumanity to man plumbed greater depths of sheer brutality than were attained, and are still maintained, in the Dark Age of twentieth century America.

It is a record of which every American may well be otherwise than proud.

Chapter II

Ambulatory Addicts

WE HAVE learned that the famous Treasury Department census of drug addicts, made in 1918, estimated the number of habitual users of narcotic drugs in the United States as "in excess of a million." Upward of three-quarters of these were found to be engaged in gainful industries of wide range and variety.

In order of frequency, the addicts were listed as of the following occupations: 1, housewives; 2, laborers; 3, physicians; 4, salesmen; 5, actors; 6, unemployed; 7, business men and women; 8, nurses; 9, farmers; 10, office workers; 11, professional men and women; 12, prostitutes; 13, pharmacists; 14, dope peddlers; 15, mechanics; 16, merchants; 17, gamblers; 18, newspaper men and printers.

This list is highly important as showing that drug addicts, a few years after the enactment of the Harrison Law, and before the Code became operative, were scattered through all ranks of society; were for the most part employed in respectable callings; and very emphatically did not include a large percentage of the criminal classes. Only three minor groups—prostitutes, dope peddlers, and gamblers—could be called criminal types.

The idea that the habitual use of opiates (the only significant type of addiction, other than caffeine, nicotine, and alcohol addictions) tends to degrade the mind and morals is an illusion foisted on the public by the newspapers, with their "dope fiend" drivel. The truth which every competent observer will affirm is that opiate addiction tends to repress rather than

accentuate criminal propensities. Opium is a soothing rather than an excitant drug. Moreover, the fear of the pains of withdrawal symptoms, which would ensue if the addict were arrested, has a further restraining influence.

The addict becomes a criminal only when the drug is withheld. The Narcotics Code, through making drugs inaccessible at reasonable cost, was the direct and appalling cause of the minor criminal activities of the thousands of addicts who in the pre-Code days were respectable, law-abiding, self-supporting citizens.

Even under stress of privation, opium addicts almost never become major criminals.

The vast preponderance of their delinquencies are at worst of the order of petty thefts—to secure money with which to buy from the peddler the drug that they imperatively need, and which, in any sane view, they are as much entitled to receive as the nicotine addict is entitled to receive tobacco, the caffeine addict coffee and tea, or the alcohol addict beer and whiskey.

Waiving that point for the moment, however, the second thing to be noted about the named employments of normal addicts is that the million addicts listed were obviously for the most part persons who went about their affairs just as other people do. That is to say, using a term that came into vogue presently, they were "ambulatory."

That word came to have a very particular meaning, after the Narcotics Code came into being. For the Code expressly stated that ambulatory addicts were under no circumstances to receive narcotics treatment, even in the attempt to cure their addiction.

That "regulation" has been appraised as perhaps the strangest ruling that ever issued even from a political bureau. Its consequences could not be other than bizarre. Here were up-

ward of a million people of normal activities and vocations, whose normality—even sanity—depended upon the regular use of small quantities of an inexpensive medicine, which, by the worst appraisal, is no more harmful than tobacco, and by any sane appraisal far less harmful than alcohol. The average user required about ten cents' worth of this medicine daily, at the usual drug store rate of sale.

So long as this dime's worth of medicine could be secured daily, the three-quarters of a million users who were gainfully employed—in every manner of legitimate work, including all the "learned" professions—could continue their vocational activities precisely on a par with their fellows. Many of them did not realize that they were opium addicts, any more than the average tobacco smoker realizes that he is a nicotine addict.

A very large number of housewives and others got their medicine from patent nostrums—soothing-syrups, pain-killers, "female remedies," and the like.

No one thought of the use of these medicines as having any moral significance. (One fairly well known temperance lecturer was a morphine addict. Thousands of women were addicts of opiates, with no thought of wrong-doing, who would have gone on their knees to pray for a lost soul had they seen cigarette stains on the fingers of a daughter.)

Now came the "regulation" that we have described as the Blackmail Code, designed to prevent this scattered group of a million average citizens from securing the medicine that they imperatively needed. As I have said over and over, no stranger manifesto ever issued from a political bureau. The fact that it was not a law, yet was destined to have the force of law, merely adds to the paradox; which is climaxed by the circumstance that the mandate would have been illegal—unconstitutional—even if it had been issued as a Congressional statute, instead of a Revenue-bureau ruling.

If the "regulation" had been signed by the President of the United States, the Secretaries of State and Treasury, and the Chief Justice of the Supreme Court, it would have had precisely as much *legal,* or constitutional, authority as if it had been signed by a bootblack—or by the Revenue and Prohibition agents who actually did sign it.

Yet for fifteen years (at least) it was to have the full force of a devastating law, as we have seen. Our concern of the moment is with the effect of the Code in preventing physicians from prescribing the needed medicine for any habitual user whomsoever, except under peril of arrest and prosecution. The rule which effected this interdiction was the clause forbidding the treatment of ambulatory addicts.

An ambulatory addict, within the definition of the Code, is a person who is not under forcible confinement—in jail, prison, or under commitment in a sanitarium.

The actual meaning of "ambulatory," as things worked out in the sequel, is: "able to visit a dope peddler."

The ultimate effect of the Code (whatever the original intent of its promulgators) was to make sure that no addict who could walk should receive the drug he needed except by buying it from a dope peddler.

Needless to say, there was no such statement as that made openly in connection with the Code. On the contrary, the Code made *ostensible* provision for the medical treatment of even ambulatory patients who were either (a) so old and infirm that deprival of the drug would endanger their lives; or (b) sufferers from some incurable pathology, other than addiction, of the class of "cancer, late stage of tuberculosis, or other maladies well recognized as falling in this class."

Please note the word "ostensible." It has plenty of meaning. What it implies in practice will be told in detail in other connections. What it did *not* imply is that any physician could

give narcotic treatment to any addict whomsoever so long as that addict was able to visit a dope peddler—unless the physician coveted arrest and prosecution for felony.

A brochure issued in 1925 by the Los Angeles County Medical Association (a body of upward of 2,500 members, affiliated with the National Association), stated the matter concisely and accurately in these words:

"It is here stated definitely, and after consideration, that *any physician who attempts to devote his time to the treatment of narcotic addiction disease at the present time, no matter how conservative he may be, or conscientious, or careful, or no matter how humanitarian his purpose, will invariably come into conflict with the laws.*"

The "laws" referred to, it was clearly stated, were not actual laws, but the "regulations" or Code, about which we are speaking. At about the same period, there were editorials in various medical journals of similar tenor. At this time, too (1925), came the Supreme Court decision in the Linder case, declaring that The Harrison Law had no jurisdiction over medical practice, and was never designed to have (and would be unconstitutional if it did make such an attempt).

But now the dope smuggler and peddler were in complete control, supported by the illegal Code, and mere Federal Law was at a total discount.

For ten full years thereafter it continued to be true that no physician could treat an ambulatory addict without danger of coming in contact with the "law"—with a statistical chance of 95.6 per cent of being convicted of a felony for his humanitarian pains. Physicians who were soft-hearted enough to yield to patients in distress were put through the Code mill at the rate of more than a thousand annually (1,293 in 1934), and either blackmailed into paying tribute or sentenced to prison. A word to the wise does not always avail; but a five-year sen-

tence (to prison) is likely to reach the understanding of even the least intellectual.

The cream of the jest is that ninety-nine times in a hundred the physician who was made to feel the power of the Code (disguised in a sheep's skin of "Law") had believed himself to be following the Code to the letter. Not one physician in a thousand realized that the Code was illegal. It was universally assumed that the "regulations" were actual Law of the land. But thousands of unwary physicians, first and last, assumed also that the regulations were put out in good faith (one naturally thinks that about Federal rulings, until one learns better), and that therefore it was permissible to treat narcotics addicts who obviously suffered from some incurable and painful malady other than addiction—as allowed, *ostensibly,* you recall, in the famous "exception number 1" of Article 85 of the "Regulations."

No assumption could have been more mistaken—or more dangerous. A patient might have both cancer and tuberculosis (the two "exempt" diseases named) and syphilis of the nervous system thrown in for good measure; but if that patient was still able to get about enough to visit the dope peddler (and many victims of these maladies are ambulatory almost to the end), any physician who treated him was virtually signing a permit to introduce himself into the penitentiary when he wrote his name on the prescription.

That doesn't seem plausible, but the score counts. Upward of twenty thousand physicians, if they cared to speak, could tell you from personal experience how very *fully* the score counts.

And a hundred thousand other physicians, having seen what happened to their colleagues, will tell you very emphatically that they would not treat a drug addict, under any conceivable circumstances, to save his life—or yours.

Can you blame them?

Yet there were thousands of these humane physicians who could not stand by and see human beings suffer without seeking some means to aid them. It occurred to many hundreds of them, in the aggregate, in one part of the country or another, that something might be done by cooperative action. The common impulse that actuated them was well expressed in a finding of the Whitney Legislative Commission in New York, which, after a lengthy investigation, in a report to the Governor, stated:

"It has been established to our satisfaction that drug addiction, however acquired, is not of itself a vice but is rather *a disease* and one which affects honest and intelligent people in all walks of life . . . ANY MEMBER OF THE MEDICAL OR PHARMACEUTICAL PROFESSIONS WHO REFUSES TO PRESCRIBE OR DISPENSE NARCOTIC DRUGS TO ANY HONEST ADDICT TO ALLEVIATE THE SUFFERING AND PAIN OCCASIONED BY LACK OF NARCOTICS IS NOT LIVING UP TO THE HIGH STANDARD OF HUMANITY AND INTELLIGENCE ESTABLISHED BY THESE GREAT PROFESSIONS."

The Narcotics Code, to be sure (which came three years later), runs absolutely counter to such a pronouncement. The Prohibition agent at the helm, and his dope-peddler coadjutors, were not troubled by "standards of humanity and intelligence." They thought in terms of fanaticism, of bureaucratic pride, and of dollars.

LAW VERSUS CODE

The Harrison Special tax law (often called the Narcotics Law) of 1914 was designed to make sure that narcotic drugs were distributed solely by physicians.

The Narcotics Code (stemming from rulings of the Commissioner of Internal Revenue), never a law, denied the victim of narcotic addiction disease the privilege of securing any narcotic drug from the physician or druggist, forcing him to patronize the newly-created dope peddler.

The Supreme Court (Linder decision, 1925) declared that the Federal Government has (legitimately) no such power as that assumed in the Code.

The successive Attorney Generals under Presidents Coolidge, Hoover, and Roosevelt (1925-1934) ignored the decisions of the Supreme Court, and, through their subordinate United States Attorneys, and with the cooperation of District and Circuit Federal Judges, arraigned upward of 20,000 physicians for alleged criminal violation of the Harrison Act. Not one in a hundred of these physicians had violated any law, but ninety-five per cent of those brought to trial were convicted.

In May, 1935, in the N. R. A. decision, the Supreme Court declared Codes (of which the Narcotics Code is typical) unconstitutional. The Executive Department (Attorney General, U. S. Attorneys, Federal Judges) ignored the decision. More physicians were prosecuted in 1935 than in 1934.

In January, 1936, the Supreme Court, in the A. A. A. decision, reiterated its ruling that the Federal Government has no control over the practice of a profession, citing the Linder decision of 1925 as basic. In August, 1936, a Government official, on the witness stand in a narcotics trial, stated: "We pay no attention to the Linder decision." (In that particular case, the physician on trial was found guilty and sentenced to seven years in the penitentiary and a $10,000 fine, his crime being that he *treated two patients for three days* with hypodermic injections in his office—as he had every legal, medical, and moral right to do.) Federal Judges in general—with one notable exception—continued to uphold the Code, in defiance of the Supreme Court.

It is now stated, and will be frequently repeated in these pages, that all Narcotics Officers, United States Attorneys, and Federal Judges who continue to defy the Supreme Court, and uphold the unconstitutional Code (thus playing into the hands of the dope peddler) are *ipso facto* members of the Dope Ring—whether or not they are conscious co-adjutors. The results of their illegal activities are illustrated in the successive chapters of this book.

Chapter III

Code Versus Clinic

OUT in California twenty years ago a distinguished attorney, Major Frank S. Hutton, was appointed special counsel for the State Pharmacy Board, with headquarters at Los Angeles. One of his functions was the prosecution of all offenders charged with violation of the State Poison Act, most of whom were narcotic addicts.

As Major Hutton himself tells the story, he soon came to realize that the law was not accomplishing anything toward the reformation of addicts. He found the same offenders coming before him again and again. He began to realize that this was a medical rather than a legal question. He consulted physicians, and found that most of them were totally ignorant of the character of addiction and the nature of the addict. Most of those that had any ideas on the subject thought of the cure of addiction as the purging of the system of a poison; and had no conception that the time element should involve months or years instead of days.

He found, however, a few psychiatrists who had clearer notions, or better knowledge; and with their cooperation he was able to start a movement for the medical supervision of addicts, which culminated in the formation of a public Clinic where addicts of all types could receive expert medical attention. This was in the years immediately following the War, when a large number of veterans who had acquired the drug habit while overseas were in urgent need of attention.

The Clinic was purely a humane enterprise, conducted by

distinguished physicians, who received nothing whatever for their services (as is usual with medical Clinics). The results were highly gratifying. The work was conducted with the cooperation of the State Board of Pharmacy. Different types of cases were classified, and patients regarded as fit subjects for such treatment were permitted to receive a ration of morphine adequate to keep them in "balance."

Major Hutton asserts that he himself kept track of many of these patients while under care of the Clinic, and that "they were able to earn their living, support their families, and maintain themselves with at least a semblance of decency, where before that time they were derelicts of the first order."

That sounds like a good beginning. The humanitarians imagined that they were doing a good work. The State Board of Pharmacy cooperated with enthusiasm.

Then the Clinic was closed by the Federal Government.

At about the same time a Narcotic Clinic of similar scope was started at Shreveport, Louisiana. This also operated with apparent success, and had the approval of local narcotics and other authorities. The physician who conducted it felt elated at the results of his humane and unpaid endeavor.

Then the Clinic was closed by the Federal Government.

Shortly afterward, up in Portland, Oregon, we find another Narcotics Clinic, under auspices of the Health Commissioner, Dr. George Parrish. A free Clinic, of course, conducted by philanthropic medical men, with approval and cooperation of city officials and narcotics officials, local and State. All persons concerned felt that good work was being done—sick people humanely treated; opportunity for rehabilitation given many a derelict. There seemed promise of great things. A fine beginning toward the solution of the narcotic addiction problem.

So the Clinic was closed by the Federal Government.

A few years later, another Clinic was started at Los Angeles. This Clinic was inaugurated by the Health Board, with cooperation of the Commissioner of Charities, afterward Mayor. Its chief proponents included the members of the Narcotics Committee of the County Medical Association, and affiliate of the American Medical Association (the local Association having about 2,500 members).

The Clinic was presently housed in the County General Hospital, one of the largest and best equipped hospitals in the world. Physicians who were members of the regular hospital staff (psychiatric and endocrine departments) were directly in charge of the Narcotics Clinic. The local and State Narcotics officials were ardent supporters of the Clinic, and every case under treatment was reported in detail to the State Board of Narcotic Control.

No one connected with the Clinic received a cent of pay. All prescriptions (sometimes to the number of seventy in a single day) were written and signed by one or the other of the two chief physicians, in accordance with a State regulation. One physician, in the course of three years, wrote with his own hand and signed upward of five thousand of these prescriptions—absolutely without remuneration.

Several hundred hopeful cases were hospitalized and given treatment to cure addiction, various methods being tested, and a new form of supportive treatment developed. Incurables having other painful pathologies were given weekly rations of morphine, in the smallest adequate daily dosage, for self-administration.

Seventy of these cases, over a period of three years, were so far rehabilitated that they became law-abiding, self-supporting, relatively healthy individuals, mingling unnoticed with their fellows. Not one of these came in contact with the law during this period, though many of them had earlier "criminal" rec-

ords;—that is to say, had been repeatedly afoul the law during the time when it was impossible for them to secure by legitimate means the drug they required.

Recall, please, that the average price charged by the peddler for morphine is from fifty cents to one dollar a grain, and that the average dose required to keep a confirmed addict in balance is ten grains a day. This means that every patient had to pay from five to ten dollars a day to the peddler. Few addicts could secure such a sum, in addition to living expenses. How many ordinary workers can afford two or three thousand dollars a year for medicine?

But the same amount of drug could be secured at a pharmacy, under prescription of a Clinic physician, for forty cents a day, or $146 a year. Even that seems a good deal. But most of the patients could and did manage it. Many of them were persons of much more than average intelligence and vocational ability. For the few exceptions, the drug was supplied without charge by the authorities.

The work accomplished by the Clinic was so beneficent that word began to go abroad that California had solved the narcotics problem, at least as to one type of addiction—patients having severe types of pathology other than addiction disease. It was felt that if the State law could be modified, to permit the treatment of ambulatory cases of pure addiction disease as well (these being the cases with far better chance of cure), California would indeed set a model for the entire country to follow.

All medical specialists who had personal knowledge of the work of the Clinic, and all local and State Narcotics authorities —to say nothing of Mayor Shaw and his associates, the officers of the Public Health Service, and sundry other humanitarians —were enthusiastic. From personal observation they knew what was being done, not merely for physical rehabilitation of

the sufferers, but for the economic interests and the forces of law and order.

A great humane reclamation project was in being. The White Cross Anti-Narcotics Societies applauded the good work, and gave it publicity.

Meantime the narcotics officers and the police reported a marked falling off in the number of "dope" peddlers—as might be expected, considering that so many customers had been taken away from them.

Therefore the Clinic was closed by the Federal Government.

Does that seem a non-sequitur? No, it is a quite logical sequence—a valid collocation of cause and effect: The Clinic rescued sick people from the clutches of the dope peddler, and therefore the Clinic was closed.

"And that," you say, "is a *logical* sequence?"

Precisely so. That was just what I meant to say. The Clinic enabled seventy people at one time, for a period of three years, to keep clear of the clutches of the dope peddler.

That meant that upward of $700 a day, or $255,500 a year, or more than three-quarters of a million in three years had been taken out of the pockets of local peddlers.

Could you expect the peddlers and the smugglers that supply them to sit back quietly and see their business cut to ribbons? Hardly. And so, as I said once or twice before, the Clinic was closed. Seventy patients leading normal lives were suddenly told that they could no longer receive the medicine on which their integrity of body and mind depended, except from the peddler—at ten dollars a day, in place of the forty cents they had been paying at the pharmacy.

And this happened in the time of well-known depression, early in the year 1934. How could the average citizen, addict or not, secure an extra $3,650 dollars to pay the new medicine

bill? Not by following his legitimate vocation, you may be sure.

I shall not now dwell on the sequel, beyond saying that at least six of the unfortunates thus thrown back to the dope peddler died of privation within the half-year. Others endured suffering rather worse than death. Practically all were forced to abandon their normal manner of life, and become dependents or vagrants or petty criminals. Those that did not actually die must sooner or later find means to satisfy the exactions of the peddler, who welcomed them back with greedy enthusiasm, and profited as of yore by their helpless distress.

One patient, the wife of an invalid veteran, turned stool pigeon, in her distress, under aegis of the Federal Narcotics officials, and was murdered by some Negro addicts for her pains. Others sought piteously to be sent to the State Narcotics Hospital, but could not be admitted, because they were incurable. Some pleaded even to be sent to jail—and were denied that doubtful boon. One housewife, afflicted with an excruciatingly painful tumor, writhed in agony at home, while her pastor wrote and telegraphed to Washington, vainly seeking permission for her to receive medical solace.

Others applied piteously to the chief Federal Narcotics agent, who referred them to the President of the County Medical Association, who declined to take any action. When he saw the Chairman of the Narcotics Committee of the Association under arrest for having treated the narcotics cases at the Clinic, what dare he do? He or any other physician? Obviously nothing.

Do you get the picture? It is not easy to envisage. Here in the fifth largest city in America, with upward of four thousand registered physicians, several score sick people—all having painful maladies that have been diagnosed officially in one of the largest and finest hospitals in the world—are in dire want of medical treatment, and cannot receive it.

They suffer agony, and no physician dares to solace them.

They cannot be really ill, you say? Well, within seven months nine of them will be dead, for want of medicine. (I will give you their names, with brief details of their maladies presently.) After all, that seems rather conclusive, does it not? People may fake symptoms. They may pretend to suffer, when they really do not suffer. But when they seem to suffer—features haggard, sweat pouring from their writhing bodies, pupils dilated, blood pressure at low ebb; moaning piteously, vomiting, purging—and presently collapse and are dead—well, it takes a mighty skeptic to continue to argue that nothing really ailed the impostor.

And when you have seen that sort of thing happen a few times, you begin to wonder whether it might not be permissible to give treatment to another person who seems to show the same symptoms of distress, but is not yet dead.

The Narcotics Code gives the answer in the negative.

FEDERAL CONTROL

A typical illustration of the attitude of the Federal Narcotics Bureau was given when a representative of that Bureau came to Seattle, to oppose a bill that had been prepared by the White Cross Society for presentation before the 1937 legislature.

This bill, which had the support of the Governor, provided merely that the State Medical Association should be empowered to treat narcotic addicts humanely—supplying them with necessary medication, and thus freeing them from the dope peddler. But this, of course, is the one thing that the Federal narcotics authorities cannot tolerate. And, as usual, their opposition proved effective. The bill was shelved, and for at least another year the State of Washington was safe for the Dope Ring.

In appraising such typical illustrations of the attitude of the Federal authorities, it must be kept in mind that the opium addict is not inherently a criminal—but, on the contrary, when he can secure the drug his system needs, is less prone than the average normal citizen to commit infractions of the law. It is only "in their frenzied desire for money

to buy drugs" (in the words of the Federal bill that established the Narcotic Farms for treatment of addicts) that they commit overt acts.

It follows that the Narcotics authorities, in making it impossible for addicts to receive direct aid from the medical profession (as in the Seattle instance just cited), are effective promoters of crime.

If the Harrison law were observed, permitting this medical question to be dealt with by medical men, the dope peddler would disappear for lack of customers; the Federal court calendars would clear (*calling for reduction rather than increase of the roll of Federal judges*); Federal prisons would be vacated to the extent of about thirty per cent of present population; at least a billion dollars a year would be saved to the tax payer and—most important of all—half a million pitiable victims of human superstition, stupidity, and cupidity would be rescued and emancipated.

All this would happen automatically if the decisions of the Supreme Court as to the meaning and force of the Harrison Special Tax Law (commonly called the Narcotics Law) were heeded by Narcotics Bureau, United States Attorneys, and Federal Judges—in a word, by the effective executive authorities.

In the light of such a situation, it is amusing to hear the clamor for *more* Supreme Court Judges. What difference can it make how many members there are, so long as the Court has no authority to enforce its decisions? Twelve years have passed since a unanimous decision of the Supreme Court declared that the Federal Government has no power to regulate the practice of the profession of medicine; and that Congress never intended to assume such power. And there has been no single day since then when the decision has not been openly derided. A laughable situation, is it not?

Chapter IV

Roll of Honor

AN OFFICIAL report records with obvious pride that it was the Federal Government which everywhere "stepped in" and closed Narcotics Clinics, designed to ameliorate the condition of the victims of addiction disease, and rescue them from the dope peddler, "throughout the country."

This statement is authoritative, since it occurs in a report of the State Narcotic Committee of California, signed by Senator Sanborn Young and Assemblyman Ernest C. Crowley, and containing corroborative article by Harry D. Smith, Supervising Narcotic Agent, Pacific Division (Federal) and Harry J. Anslinger, Commissioner of Narcotics (Federal). It is interesting to have this historical point settled, since there has sometimes been a question as to the precise origin of the mandate through which the Clinics in question have been closed. Local authorities have never been responsible, of course, since they were always enthusiastic in support of the humane enterprises which the mandates from Washington terminated.

At Shreveport, Louisiana, for example, where the Clinic conducted by Dr. Butler, local Health Commissioner, attained most gratifying results, a committee of the local Medical Society, protesting against interference with the Clinic by outside influences, stated, in the course of a report of endorsement:

"It is significant that Dr. Butler's judicious and tactful conduct of the Clinic has secured for him the unqualified support and cooperation of the Federal [?], State, Parish, and City

authorities, and also of the State and City Boards of Health.

"In brief we wish to express our unqualified support and approval of the Shreveport Narcotic Clinic and its systematic and effective administration by Dr. Butler."

Similar commendation came from official resolutions of the staffs of the two local Sanitariums (signed by thirty-five physicians). So there does not seem to be any one to object. But the "Federal" authorities referred to in the report must have been minor officers; for presently word came from Washington that the Clinic must be closed. And it was closed. Among the results noted were these:

"Individuals who during the life of the dispensary were leading decent lives and supporting their families reached a condition of wretched poverty. . . . Dr. Butler reports the *deaths of several former patients,* three of these in jails in other cities, while a number of his patients have been sent to the State penitentiary. . . . Of the forty cases remaining in his care (for a time) after the closing of the Clinic, *four have died,* two or three found other physicians to care for them temporarily, a few moved away, *and the others have been forced to patronize peddlers.*

"The organized charities, he states, recognize the evil effects of the closing of the Clinic and the city police department and the sheriff report that they are having endless trouble with users and peddlers. Petty crimes are increasing and the peddlers are creating new cases."

Under these circumstances, it does not appear that the closing of the Clinic was much to boast about (except by the dope peddlers). But since the Federal authorities point with pride to the achievement, we may credit them with their accomplishment, and pass to another example. The early Los Angeles Clinic has been mentioned. The Medical Director of this Clinic was Dr. W. H. Bucher.

"He states that in the case of tuberculosis, venereal and other chronic diseases, patients were encouraged with the help of Clinic treatment and supervision to pursue their ordinary occupations but that only too often drug cases were allowed to go without assistance and thus made dependable or criminals. He points out that with his drug the user can function, that without it he is sick, unable to work, and has but one object in life, namely, to secure the drug that will put him on his feet."

But such rehabilitation is no part of the Washington program. In this instance, it is recalled that Colonel Nutt, already known to us as chief proponent of the Narcotics Code, came himself to close the Clinic. Then we read of interesting results that attended the triumph of Federal authority.

"From the many letters received at the time of the clinic's last days we glean one salient fact that with the clinic operating these unfortunates were able to work, and have the ideal of normal men to look up to. Some who came to the clinic ragged and filthy, left it with decent clothes, a bank account, and a sense of having been a part of the machinery of production. Just what will become of those who prospered with the clinic is open to rather dismal conjecture."

* * *

"Every day since the clinic was closed there have been patients with their relatives and friends, come to tell us of the tragedies that followed in the wakes of these addicts' failure to get their morphine. Families have been broken up, men and women have lost their jobs, others have gone where the drug is accessible—all of this cemented together with suffering that takes courage to see."

"Suffering that takes courage to see." But the Prohibition agent and his associates of the Revenue Bureau were not lacking in such courage.

The Clinic was closed in August, 1920. Half a year later (April 18, 1921), Dr. L. M. Powers, Health Commissioner of Los Angeles, was still wondering, ruefully, what the motivation could have been that led to the disaster:

"I have not been able to realize," he writes, "the actual purpose of the closing of our clinic for there has been some unseen motive prompting much opposition to clinics which I have not been able to comprehend."

"Some unseen motive." Unseen, but not altogether unknown. Witness the letter which Mr. John P. Carter, formerly Collector of Customs of the Los Angeles District, wrote to Dr. Powers, under date of March 31, 1921. Here was an honest official who was so situated that he could catch glimpses behind the veil. Incidentally, it chanced that Mr. Carter had in his official employ a man whom he regarded as the most efficient and trustworthy assistant in his entire secretarial staff, who had been for many years a morphine addict—taking his regular dose of the drug every few hours, and quite incapable of functioning without it. Because of this experience, Mr. Carter was doubly sympathetic toward the work of the clinic; and this is what he wrote:

"I never was connected with any work that appeared to me to afford such a field for service as during my connection with you, Dr. Barrows, and the other splendid physicians who gave of their time and of their intelligence so liberally in an effort to deal with the narcotic situation. I believe there is a place in there for service to human kind that will be more richly rewarded in the way of human salvage than in any other field of endeavor. It is a crusade as admirable and as deserving of success as any other crusade in the whole tide of time."

Then these telling words of appraisal:

"I can't understand the opposition to it from any other premises than that we are so thoroughly commercialized that

great commercial interests are more powerful than human sympathy."

"Great commercial interests." Stated less diplomatically, the billion-dollar bankroll of the illicit drug traffickers.

Mr. Carter adds a few words of elucidation as to details:

"Our clinic here was closed on order of the Prohibition Director of the State of California, at that time Mr. John L. Consadine. He was supposedly acting under instructions from his superior officer, the Commissioner of Prohibition in Washington, under whose direction the administration of the Harrison Narcotic Law falls. . . . A Prohibition Inspector came

. . . and it was at direct written order that the clinic was closed."

In the fine volume on *The Opium Problem,* by Drs. Charles E. Terry and Mildred Pellens, from which we quote some details of the closing of the Shreveport and early Los Angeles Clinics, mention is made of similar Clinics in about forty other cities of many States, including Connecticut, Georgia, Kentucky, New York, North Carolina, Ohio, Rhode Island, Tennessee, Texas, and West Virginia. And it is stated:

"These were operated for varying lengths of time, but all eventually were closed by order of the Commissioner of Internal Revenue."

If the hint dropped by the Collector of Customs of the Los Angeles District may be credited, these must have been golden days for the active functionaries of the Revenue Bureau. Forty vigorous threats against the integrity of the billion-dollar bank roll to be officially thwarted and reduced to innocuous desuetude—surely such sterling championship called for no picayune reward. And there is no record of complaint. Rather a note of jubilation, as suggested by the report which was cited at the beginning of this chapter.

And now we bring the record nearer home, in point of time. The story of the Narcotics Clinic at Portland, Oregon, is recent history. I have heard it from the lips of its chief sponsor, Dr. George Parrish, former Health Commissioner of Portland, and now occupying a similar position at Los Angeles. The story presents no novel features as to the success of the Clinic while it operated. But there are one or two picturesque details as to its closing that deserve narration.

There is no question at all in Dr. Parrish's mind as to either the origin or the motivation of the opposition to the Clinic. The individual who came in person to demand that it be closed was an officer or agent of the Federal Narcotics service, named

Woods. Soon after the baleful order to cease interfering with the dope-peddler industry went forth, Dr. Parrish was talking with the Mayor of the city, when a Negro addict entered, pleaded for morphine, and, being refused, hurled himself on the concrete floor with such violence as to knock him out completely.

"My God, Doctor," cried the Mayor, "must we stand here and see such things as that? Can we do nothing for these poor unfortunates?"

Dr. Parrish passed the question on to the Federal agent. And this was the answer:

"Yeh, sure; there's plenty you can do. Run the whole bunch of them down to the ocean, and kick 'em in. They'll make fair fish food. That's all any of them are good for."

There was a Federal agent with plenty of the kind of "courage" which the soft-hearted Los Angeles physician above quoted found so difficult to summon.

The Mayor and Dr. Parrish, however, did not think well of the suggestion. Yet had they followed it, they would in reality have done the unfortunate addicts a kindlier service than by turning them back into the clutches of the dope peddler, as they were forced—by Federal mandate, as Senator Young proudly reminds us—to do.

And now for a few more words about the later Los Angeles Narcotics Clinic. I have named the local and State authorities that sponsored it.

The success of the Clinic was spectacular. The debacle of its closing, by Federal authorities, was cataclysmic. You think that too big a word to apply to the sacrifice of a few score sick people?

So perhaps it would be were only these individuals in question. But the real import of the Los Angeles Narcotics Clinic was by no means restricted to the narrow local bounds. It was

an institution of rapidly-growing fame. Already the results of its treatment of several hundred drug addicts had been published in Medical Journals. The work was known to the White Cross Societies, and projects were pending to petition legislatures to sanction the similar treatment of ambulatory addicts whose sole malady was drug addiction disease—which the State laws of California did not permit the Clinic to do.

In a word, an object lesson was being given in the simple and effective solution of the opium-addiction problem.

But by the same token, the object lesson just as clearly revealed the simple method by which the illicit drug traffic—the billion-dollar racket—could be scotched.

The publication in which Federal Agent Senator Young applauds the closing of Clinics contains the statement that the daily turnover of the dope-peddler business in California is over $20,000, aggregating more than seven million dollars a year. That business would have been nullified, as the Federal apologists well knew, if the object lesson presented by the Los Angeles Clinic were allowed to be generally observed. So word went forth that the Clinic must be abolished.

I have elsewhere told in detail the manner in which this object was achieved by the Federal authorities—in opposition to the wishes and urgent efforts of all local humanitarians, the Mayor and his associates, the Health Board, the Medical Associations, and the State and municipal narcotics authorities.

Senator Young might well plume himself and congratulate his confreres of the "Government" on so notable a victory.

But why, you ask, did the *Federal* authorities thus "step in and stop" the Clinics?

Simply because the Blackmail Code was and is a Federal affair—the alleged interpretation of a Federal Law.

The Clinic was conducted by physicians who necessarily held State licenses to practice medicine, there being no other licenses.

There is no such thing as a Federal license to practice medicine. The physicians therefore paid full heed to State laws. They believed themselves also to be giving full heed to Federal laws —including the "Regulations" issued by the Narcotics authorities (which we here term the Blackmail Code), the legality of which few physicians have ever thought of challenging.

Why, then, did the Federal authorities object to the operation of the Clinic under such conditions? Why should *anyone* wish to thrust rehabilitated patients, now respectable and law-abiding, back into lives of misery, hardship, pain, and criminality?

We shall raise that question again and again before we are through. And we shall find always the same answer—tender regard for the integrity of the billion-dollar bankroll.

There does not seem to be any other answer available.

THE CARE OF PATHOLOGICAL NARCOTIC ADDICTS

Statement by Mayor Frank L. Shaw of Los Angeles

After years of experience as Chairman of the Welfare Committee of the Los Angeles County Board of Supervisors which had charge of the Los Angeles County Hospital, including the Psychopathic Unit, and as a result of my connection with City and County Health Departments, it is my opinion that the only way of caring for pathological addicts without putting them in the position of becoming the prey of the dope peddler, and penalized by the peddler interests, is to have Centers for administering to these sick persons by recognized medical authorities.

The Los Angeles Narcotic Clinic, under the immediate direction of the Los Angeles County Medical Association and held in the County General Hospital, fulfilled these requirements and seemed to successfully solve the narcotic problem in this vicinity.

I believe similar Centers throughout the nation, administered by the local Medical Associations under the supervision of the Federal Government, would eventually eradicate the narcotic peddler and contribute a real public service to the unfortunate pathological addicts.

Frank L. Shaw

July 5th, 1938

Chapter V

Hypocrisy of the Code

A HALF-TRUTH is often more deadly than a direct whole-cloth lie. Similarly, the deadliest feature of the Narcotics Code is its seeming plausibility. In particular, the "exceptions" which permit narcotic treatment of what is commonly spoken of as "other pathology." The exempting clause reads:

"Exceptions to this rule may be properly recognized (1) in the treatment of incurable diseases, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class . . . ; and (2) where the attending physician prescribes for an aged and infirm addict whose collapse from the withdrawal of the drug would result in death . . ."

Nothing wrong with that, apparently. But let the guileless physician act on the permission thus seemingly granted, and note what happens to him. He is lucky indeed if he does not presently find himself under arrest, haled to jail, and placed under indictment. And when the case comes up for trial (if he declines to "compromise," or pay blackmail), he will soon have his eyes thoroughly opened. He will discover that there *are* no diseases "well (or for that matter ill) recognized" as coming within the exempt class. And as for the "aged and infirm," Methuselah himself would not be old enough to bring him within exception (2).

I have sat in court and heard medical witnesses debate pro and con for many days (and to the extent of words enough to fill a very large book) on the question of the "incurable disease"

of a patient who himself freely admitted having received treatment for syphilis of the central nervous system (conceded to be an "exemption" malady) and *whom the Government attorneys supplied day by day with the same amount of morphine that the "accused" physician had supplied—the chief prosecutor admitting that the drug could not be withdrawn without "producing a maniac."*

Can you believe in the bona fides of a Government attorney who will virulently press a suit under such circumstances; or of the Federal Judge who will permit the suit to be pressed, without ever letting the jury gain an inkling of the true conditions?

Neither can I.

But what can the helpless physician do about it?

Even where the diagnosis is cancer or tuberculosis (the maladies named as establishing the exempt "class"), the diagnosis may be disputed—and almost certainly will be disputed, if the patient is able to go about, and hence might come within purview of the dope peddler.

And as to that "aged and infirm" addict, let the physician beware of him, as he would bar a leper from his office. For if, thanks to treatment, his collapse did not "result in death," the partly restored sufferer will probably be dragged to jail, and given such medical attention as to resuscitate him, and temporarily take him off the drug, while under confinement (as could never have been done without restraint). He will then be carefully nursed in jail, to be used as a witness against the physician, when the time comes for the trial. Of course the addict may die in jail, as often happens, and in that case, the suit is dropped. But often he pulls through; and after the physician is disposed of, he is turned out, to become again a patron of the dope peddler. And when he again collapses, no physician will rescue him. He will die unsolaced; being now too weak to secure money to pay the peddler. And he probably

will be denied even the privilege of going to jail—since there is now no official motive for arresting him. Man's inhumanity to man!

It sounds fantastic, does it not? I am outlining the true story of thousands of addicts—a very large proportion of whom were honest citizens, of excellent position in their varied walks of life—actors, authors, professional men, business men, tradesmen in every sphere—before they became dependent on the drug, and would so remain had not the blackmail code made it impossible for them to receive at legitimate cost the medicine that their bodies now imperatively demand.

Just by way of typical illustration, let me quote a paragraph from a personal letter that chances to come to me on the day when I am writing these pages. The writer is a special investigator of the American White Cross Association on Drug Addictions, one of the few organizations whose members are fully apprised of the true status of the drug-addiction problem in America.

"I have a case before me now of a fine young fellow who took the cure at our hospital, remained off the drug thirty days, went back on again. Through W.P.A. work he is able to earn $55 a month, which supports himself and his very beautiful and courageous wife. This man is in fear of being arrested and sent back to our farm for six months, losing his job, breaking up his home, and maybe the loss of his wife, simply because no doctor in his little town will give him five grains a day or sell them to him for fear of arrest. His Doctor says, 'I am not going to sacrifice my reputation and practice for any drug addict or all of them.' What a terrible situation."

A terrible situation, certainly. Yet you can hardly blame the doctor. After all, martyrdom is a ghastly business. Any doctor who tries to rescue such a patient will land in prison; or at best with a "suspended sentence." And even organized medicine,

as we have seen, is helpless—or lacks courage to "buck the tiger."

So this young man, *who in any other country but ours would stand an excellent chance of living a normal span of normal life,* like average members of his class, will almost inevitably, in this land of liberty, be forced into technical criminality, become an outcast, driven from pillar to post; always in distress; presently diseased, prematurely old and infirm—finding release ultimately only in death.

But what of all that? Just another notch on the bludgeon of the Federal Narcotics authorities. Why waste words on an episode that is duplicated scores of times every day of the year—and has been for the past double-decade? The billion-dollar bankroll must and shall be preserved.

THE BILLION-DOLLAR RACKET

The investigations of Mr. Everett G. Hoffman, of the American White Cross Association on Drug Addictions, extending over a period of fifteen years, lead him to believe that there are at least 500,000 narcotics addicts in the United States today. The average quantity of morphine required by a confirmed addict is commonly placed at not less than six grains a day. The dope peddler is the addict's only source of supply, and his price averages at least a dollar a grain.

On that basis, the peddler receives from the addict upward of $3,000,000 a day, or more than a billion dollars a year—which establishes the dope racket as the most lucrative system of graft in the country or for that matter in the world.

The billion dollar estimate takes account only of direct payment to the peddler. The economic loss involved includes many other factors—cost of maintenance of the tens of thousands of addicts who would be self-supporting, law-abiding citizens were they not forced into criminal activities to meet the exactions of the peddler; cost of police, courts, jails, prisons, etc.—aggregating, according to carefully compiled estimates of the American White Cross Association on Drug Addictions, something like $2,735,000,000 a year.

That means a tax-toll of not far from one hundred dollars on every family in the land, each year; or a total tax of, say, $2,000 during

the period since the illegal Code of the Prohibition agent (based on rulings of the Tax-Collecting Bureau) made it impossible for sick addicts to secure the medicine they need, and thereby brought the dope peddler into being.

Might it not be good business policy to do away with the illegal Code, restore the Law, and thereby abolish the illicit drug racket?

Chapter VI

"Medical Martyrs"

WHEN Dr. Lester D. Volk made the two famous speeches (January 13 and June 30, 1922) in which for the first and last time the illegal Blackmail Code of the Prohibition commissioner was presented in its true light before the congress, he gave various telling illustrations of the effects of operation of the extraordinary document. Among others he cited a case which is presented in the Congressional Record under caption of "The Persecution of Dr. J. M. Manning."

"We can no longer afford," said Congressman Volk, "to leave the interpretation of the law to the opinions of warring factions or administrative appointees, who change in personnel or may change their minds overnight. We can no longer afford to continue in our national life and administrative offices such situations as called forth the editorial in the Morning Star, of Wilmington, N. C., February 14, 1922, and which are calling forth magazine and newspaper comment with increasing frequency and openness of declaration and condemnation.

"The editorial deals with the recent trial and acquittal of Dr. J. M. Manning, one of the most eminent medical men and citizens of his State, arrested for falsely alleged violation of the Harrison Act. The editorial states that during the trial it was brought out that subordinate officials were 'going about the State terrorizing doctors and druggists.' It voices public appreciation of the statements and attitude of Judge Conner, who condemned the actions of the Government official, and states in part as follows:

" 'The law under which Dr. Manning was indicted is one of the most wholesome and beneficial laws on the Federal statute books. But, like most Federal statutes, it provides that some department or officer may make regulations for carrying the law into effect. This law has been surrounded with so many abominable and useless regulations that it is almost impossible for a druggist or physician to sell or administer opiates or narcotics without violating some regulation.

" 'It should not be necessary for a judge to comment on these "flimsy cases brought into court against our best citizens" engineered by "peripatetic" subordinate officials or whoever may influence or direct them.

" 'Government by inspectors and deputies during the War may have been necessary, but now that the war is over the citizen is going to demand that the Government to which he pays such enormous taxes shall protect his rights and not treat him as an alien enemy.' "

Comment: Wrong. The citizen will make no such demand, and the Government would pay no heed to it if he did. Less and less will be heard of protest from anybody; while the work of persecution will go on with enhanced virulence for many years to come—until many thousands of physicians have shared Dr. Manning's predicament, of whom the major part will *not* share his ultimate good fortune of vindication—because presently the so-called Department of Justice will have learned a routine method of making the worse appear the better part for edification of judges and juries. However, let Congressman Dr. Volk continue:

"It was just such another flimsy case," he says, "that was brought by my old friend and co-worker in medical journalism, Dr. Christian F. J. Laase, one of the most utterly honest men I have ever known, and one of the most studious and devoted to his profession, a man whom I personally know to have started

in his narcotic work and study at the request of the officials of the Government in cooperation with whom he studied and pursued his work.

"The mere shifting of the enforcement of the Harrison Law to the Prohibition Bureau brought into the field new appointees and subordinates who reversed the meaning of the law through arbitrary interpretation and arrested him for doing what their predecessors had advised him to do. He was tried and acquitted, but died as a result of the persecution and harassment he was subjected to in the attempt to 'get him.' Medical journals printed eulogies and medical societies passed resolutions commending his work and writings.

"He was killed by the action of an ignorant Government subordinate official. Fittingly inscribed upon his headstone is the epitaph, 'A Medical Martyr.'"

Dr. Volk then goes on to tell of another case, that of Dr. Ernest S. Bishop, who is described as "probably the foremost scientific student and authority on the subject of narcotics and addiction in this country, if not in the civilized world." He states that Dr. Bishop was indicted more than two years before by the "same ignorant and arrogant official subordinate, and held under indictment ever since."

"This is clearly being used to keep from dissemination the information on this subject contained in a library said to be the most comprehensive and complete in existence and to prevent the application of the principles evolved by an experience and work known to be the most extensive in his country . . . In spite of the unanimous protest in the medical and lay press there appears to be some power able to prevent a fair inquiry into his case and to keep him under indictment and his work suppressed."

This was said in 1922. Another year or two elapsed before the case could be forced on the attention of higher authorities.

Then, to the credit of the Department, it may be related that Assistant Attorney General William Donovan dismissed the case, and declared that "this is the worst case of persecution I have ever encountered in my experience as a lawyer."

But vindication came too late. The long strain had undermined Dr. Bishop's health, and he, too, became a Medical Martyr. And no one has appeared with courage to use the material that he was estopped by the years of persecution from making available for the profession, for the victim of drug addiction disease (a term first used by Dr. Bishop himself), and for humanity at large.

These are but sample cases. The persecution went on unabated. Nay, it gathered force with the years. At least twenty thousand physicians were victims of the persecution during the ensuing fifteen years; and in 1934 a physician who ranked only second to Dr. Bishop in his knowledge and experience of drug addiction, and whose early book had shared with the book of Dr. Bishop the honor of introducing drug addiction to the profession as a pathological malady, was finally arrested as the other had been, and subjected to the same process of delay that proved effective not alone with the pioneer worker but with hundreds of others.

The physician in question, whom the Government authorities had sworn to "get" long before, was the chief physician of the Los Angeles Clinic. The story of his persecution will be told in another connection. But there will be no story to tell of martyrdom in this case; for before the books are closed, his victory, unless I greatly mistake, will be coincident with the dissolution of the Narcotics Bureau, the banishment of the Blackmail Code, and—but I leave the ultimate sequel for the future to reveal.

Meantime, let us inspect other evidences of the beneficent "Government" activities in the enforcement of the Blackmail

Code and the support of the Big Business men of the illicit drug traffic.

THE BILLION-DOLLAR BUREAU GETS RESULTS

When the Harrison Act became Federal law in December, 1914, there was no narcotics drug problem of consequence in America, aside from the inconsequential matter of the smoking of opium by a certain number of Chinamen. There was no smuggling of medicinal opium or its products, because these medicines could be legally imported at legitimate cost.

There were no drug peddlers, because there was no market for contraband drugs.

There were no narcotics addicts (aside from a few opium smokers) in jails or prisons, because the person who becomes a narcotics addict is not temperamentally a criminal, and because opium, unlike alcohol, does not stimulate libidinous or other anti-social impulses.

In a word, prior to 1915, the very word "narcotics" was scarcely known to the general public; the term "drug-addict" had no popular meaning; few physicians had ever come professionally in contact with addiction-disease; and the "narcotics offender" as we now know him was unknown to police officers, courts, jail-keepers, or prison-wardens.

Such was the situation in 1915.

Ten years later, thanks to the Harrison Narcotics Law, *as interpreted*, the situation had been metamorphosed.

Now the smuggling of opium products had become a gigantic industry. There were thousands of peddlers, selling *tons* of morphine and heroin at a dollar a grain (the legitimate price having been one or two *cents* a grain). Tens of thousands of addicts, hitherto peaceable, self-supporting, law-abiding citizens, had been forced into peculation and crime to meet the exactions of the peddler; and these unfortunates filled the jails, crowded court calendars, and constituted (along with dope peddlers) 35 per cent of the population of the Federal prisons.

In 1925, there were 2,569 narcotics convicts in the Federal prisons (in a total population of 7,170); where ten years earlier there had been none.

In that simple statement you have perhaps the finest illustration in our history of the way in which a well-meant law, misinterpreted, can produce effects precisely opposite to those intended by its sponsors. Or, putting the same thing in different words, how our befuddled lawmakers can manufacture criminals on a colossal scale, while imagining themselves to be enacting a beneficent statute.

I have explained elsewhere that the fault did not lie preponderantly with the legislators themselves; the havoc having been wrought by the interpreters of the statute—the authorities of Internal Revenue, Prohibition, and Narcotics Bureaus. These were the direct developers and maintainers of the billion-dollar illicit drug racket; the effective sponsors for dope smuggler and peddler. These were the men who transformed a negligible company of sick people into a vast horde of derelicts and outcasts—being responsible, also, for the pitiful death from deprivation of tens of thousands of sufferers.

But the politicians who wrought this havoc would have been helpless had they not had the Harrison Law to cite as pretended authority for their depradations. So, in the last analysis, legislators must bear their share of the contumely that will ultimately be visited, by the verdict of history, on all who were instrumental in carrying on the wholesale persecution which, viewed in retrospect, will justify the characterization of the years 1915-1938 as the time of the American Inquisition.

CHAPTER VII

Just a Letter

IT WOULD be hard to conceive a more telling indictment of the Blackmail Code than that furnished by letters written soon after the Code went into effect by intelligent, respectable addicts, who found themselves veritably on the brink of the abyss. The Congressional Record that contains the speech of the Hon. Lester D. Volk in the House of Representatives, June 30, 1922, reproduces several such letters that had been sent to Dr. Volk by addicts who had read his earlier plea in behalf of victims of addiction disease. In introducting these letters, Dr. Volk says:

"No more convincing evidence for the necessity of an immediate and complete investigation of the narcotic drug problem could be presented than the facts contained in the following letters which have come to me unsolicited from various parts of the United States. . . . They represent the upright, honest, respectable, and respected addict, comprising from 80 to 90 per cent of those addicted. This is the type of addict whose care and treatment, yea, their very salvation, should command the interest of this wise, considerate, and humane Government. Contrast these with the so-called depraved, degenerate, criminal, underworld type of addict, exploited and advertised by morbid publicity.

"As pointed out in my previous speech, there are between one and two million addicts in the United States. Over one per cent of our population.

"The cries of these sufferers demand that we hear them in the name of humanity. Can we ignore that cry? Can we ignore their plea for help and assistance?"

Comment: Unfortunately, doctor, your question must be answered in the affirmative. We can and we will ignore the cry

and the plea. The Blackmail Code will not be even challenged by your eloquence. The billion-dollar bank-roll will not lose a single bill through your attack. The smugglers and peddlers and their coadjutors of the Narcotics legion (to which you elsewhere refer so pointedly) will continue to laugh in your face, and extract tribute precisely as they have hitherto done. To show what this means we have only to read one of the letters to which you refer. I choose the following, not because it is the most touching, but because it is rather shorter than others.

"Congressman Lester D. Volk.

"My Dear Sir: Recently I have had the pleasure of reading your admirable speech relating to drug addiction.

"Unfortunately, I am one of the addicts, not of the criminal class. I am a trained nurse and hold a supervising position in a large hospital. What I have suffered for the past few years since the new laws and rulings came in I never can begin to tell you. I have never bought drugs from the underworld peddlers but will be obliged to resort to that means of obtaining it if something isn't done to assist decent, respectable persons, such as I claim to be. The price of the drug now is exorbitant and the means of obtaining it is simple torture for ill persons. I have had a dreadful time finding anyone who would help me, as all physicians are afraid of the law.

"I am tied up here in the hot city all summer and dare not go away for a vacation, which I need so badly, because I can only obtain three days' supply of the drug and must stay right here in New York to get it. A short time ago I lost my only brother and I could not even go to the funeral, out of town, because I could not go away from the doctor who gives me my prescription and the druggist who supplies me. This slavery is almost unbearable.

"Addicts in New York are treated with less consideration and more cruelty than the law allows animals to be treated. All last winter I tramped through the bitter cold weather after my day's work was done to obtain my medicine, and then the fright and terror we live under all the time for fear of being deprived of it altogether and being obliged to admit our addiction, or the fear of being cast into prison and being treated with what is called the 'cold-turkey treatment,' which consists of sudden and complete withdrawal of the drug from the patient and being hourly washed down with a hose of cold water until cured. I will never submit to treatment at the hands of those cruel captors in a

public institution. I will commit suicide on the steps of the Board of Health Building first and show the world how cruel these existing laws are.

"I contracted this dreadful curse through an illness, and was surprised to find myself addicted after a short time. Not one of my friends knows of my addiction and I never wish them to; it would kill me and disgrace my family, and no one would dare to give me a position of any kind, much less such a fine one as I hold now.

"If these people who are torturing decent drug addicts are Christians, I never wish to be one. In the name of God and humanity, try to help us to go our lives as best we can, not force us to any more humiliation. This thing of being registered publicly as an addict is an outrage. Physicians, many of them, would like to help us but are frightened to touch a case of addiction. Oh, for some humane law and treatment for decent drug addicts. Thousands exist. What can the law do by inflicting such awful penalties for sick and unhappy persons? Oh, for a relief from the hell and torture of the last few years—a tortured and frightened woman.

...."

Query: Just what are the feelings of the Prohibition Agent when he reads such a letter as this? Does he gloat over it with sadistic joy, realizing that it is his work; or is there just a momentary clutch at the heart as he reflects that there are tens of thousands of his victims who might have written the letter, and that no other one man of our generation can perhaps justly claim to have been responsible for so colossal a toll of unsolaceable suffering?

But, after all, there is, for compensation, that good old Napoleonic maxim: *Canst thou make an omelette without breaking eggs?*

And if it be a billion-dollar-a-year omelette, of necessity the broken eggs must be more than a handful. Hand us the next letter.

The next letter, and the next and the next, as Dr. Volk presents them, are no less pitiful. The personal stories are of course variant, but the substance is the same. They are human

documents to wring the heart of every normal person, and fairly to glut the lust of the most insatiate sadist. Buried in the Congressional Record, they probably accomplished little in either capacity.

Chapter VIII

Can You Believe?

THE Harrison Act is intelligible only when considered in relation to certain elements of common knowledge—which find no direct expression in the law simply because they *are* matters of common knowledge. Thus, every legislator knew that:

(1) The narcotic drugs under consideration include some of the most indispensable drugs or medicines known to medical science;

(2) That these indispensable medicines may be harmful or dangerous if not handled skilfully;

(3) That several tons of these medicines are annually required in this country to meet the needs of sick people or people suffering from accidents or injuries of painful character; it being well understood that there is no known substitute for opiates in the alleviation of major pain, such as the agonies of cancer, of kidney stone, gall stone, lacerated wounds, burns, toothache, neuritis, late stage syphilis, tuberculosis, etc.;

(4) That the medicinal administration of these indispensable remedies to the millions of sufferers whose ills they alleviate is in the hands of three groups of expert professionally trained persons known as (a) physicians, (b) dentists, and (c) veterinary surgeons, respectively; and that these individuals alone can be assumed to be competent, through professional training and experience, to understand the uses of the drugs, the conditions that call for their administration, the choice be-

tween different types of drugs, and the proper dosage and manner of administration;

(5) That no layman is supposed to know anything definite about the precise action of narcotic drugs; the difference between one type of narcotic and another; the medicinal versus the poisonous doses of particular drugs; or the proper manner of administration to meet the needs of the sick or injured persons or animals that need them.

A man stricken with kidney stone or other agonizing pain does not ask for a narcotic: he calls for a doctor.

In any tragic emergency, from fire, flood, gunshot wound, knife-stab, automobile crash, or what not, every layman stands aside to make way for the first physician who can be summoned. He, and he only, will be assumed to be competent to administer the narcotic that alone can alleviate the agony of the victims. Not even a narcotics officer will attempt to stay his hand. No layman, including the narcotics officer, will offer advice as to how much morphine shall be administered. Probably not one layman in a hundred in the audience of sympathetic witnesses knows or cares whether the physician has administered one-tenth of a grain or ten grains of the pain-quelling, agony-dispelling, life-saving drug—or, for that matter, questions even the *name* of the drug, or would know the difference between opium, morphine, codeine, heroin, and cocaine or novocaine if told.

Such, then, is the background of common knowledge in the minds of the legislators whose votes made the Harrison Act a Federal law.

Can you believe that a single legislator or any other proponent of the law designed that the enactment should result in keeping the benefactions of the drugs in question from a single sufferer at any time or place?

Can you believe that any legislator designed that a single

"BY A JURY OF HIS PEERS"

THE COURT: "Ladies and gentlemen of the jury, you and you alone can decide whether this patient is sick or not sick; what the sickness is, if any; what treatment should be given; whether or not this Doctor gave the right treatment, too much or too little;—in short, *all* questions in medicine, diagosis, treatment; *everything* that concerns the Science of Medicine is left to you. The physician merely expresses an opinion; you decide the Fact. Such, the Court is obliged to instruct you, is the law."

(It thus appears that any layman, by taking oath as a juror, becomes an authority on every medical question. But what if a juror should be suddenly stricken with, say, a heart attack? Would he depend on his eleven fellow-experts; or would he perhaps like to have a mere M.D. summoned?)

physician anywhere in America should ever be prevented by any layman from administering these beneficent drugs to any patient who appealed for his services of mercy?

Can you believe that any legislator designed that any layman should ever stand at the elbow of a physician to dictate what narcotic medicine should be selected for administration to a sufferer, or in what dosage?

Can you believe that any legislator designed that any physician should be thrust into jail because some layman thought or professed to think, that the physician's estimate of the needs of a patient was wrong—though no claim was made that any patient had been injured?

Can you believe that any legislator designed that any company of twelve laymen should ever be asked to sit in judgment on a physician, to decide whether the physician had correctly diagnosed the exact nature of painful maladies; whether the physician had not perchance been mistaken when he thought the Argyll-Robertson pupil or the Romberg sign diagnostic of syphilis of the central nervous system, involving sclerosis of certain nerve tracts of the posterior division of the spinal cord?

Can you believe that any legislator ever designed that a group of twelve laymen should be asked to decide whether a physician had administered a correct dosage of morphine to a patient admittedly in need of medical treatment? Whether the physician had considered with sufficient care the question of reducing somewhat the dosage of the drug? Whether the precise manner of handling of a patient whom the physician treated was in accord with "fair medical usage"? With the proviso (I have a particular case in mind) that if the laymen believed that the physician's management of the case did not accord with a general plan suggested by *one other physician* (though approved and declared good medical practice by several other witnesses of equal or higher standing)—the laymen were to pronounce the physician who administered the treatment a felon?

Do these questions answer themselves? Then you know why

the Harrison Act makes no reference to the treatment of disease; why it attempts no estimate of any kind as to the use of narcotics; makes no mention of addiction or any other malady; does not in the slightest degree seek to hamper the physician in the exercise of his professional functions; contains not the remotest suggestion of standard for diagnosis of disease, examination of patients, manner of treatment; selection or dosage of any medicine—nor of any other matter of professional judgment or conduct whatsoever.

What place would such matters have in a pure revenue measure, designed to put a special tax on the manufacture, importation, sale, and distribution of certain drugs; a matter of taxation, not of medication?

The legislators did not for a moment presume that they were giving physicians the *right* to administer narcotics.

The legislators knew that they had no power to give such a "right"—nor power to withhold it.

The right to administer narcotics, or any other drugs, is given the physician by State laws, under which he holds his certificate as a practitioner.

The Federal legislators had no thought of interfering with that recognized state of things. They knew that they had no Constitutional power to interfere, even had they desired to do so. There is no such thing as a Federal license to practice medicine; there is only a Federal permit to buy and sell narcotic drugs in a certain manner.

Application for and receipt of this Federal permit does not change by one whit the professional status of the physician under the State law that permits him to write prescriptions. The sole provision is that, since he has paid a general tax (the nominal sum of three dollars a year, subsequently reduced to one dollar), he is entitled to use his ordinary prescription blanks (authorized by the State Board of Examiners) instead

of being put to the inconvenience of getting a special type of order-form issued by the Commissioner of Internal Revenue.

In response to this courtesy, made for his convenience, he is to keep a record of his prescriptions, for the convenience of the Commissioner of Internal Revenue, in checking the distribution of narcotics against sales that have not been properly taxed.

The entire transaction has no relation to medical practice as such; and no word of the Harrison Act suggests any such relation.

No LAW ON THE FEDERAL STATUTE BOOKS forbids a patient to seek aid of a physician—regardless of the nature of his malady, real or imagined.

No LAW forbids a regularly qualified physician to seek to aid any patient who comes to him voluntarily.

No DECISION OF THE SUPREME COURT ever sustained a regulation that runs counter to the above theses—provided the physician is acknowledged to have acted in "good faith."

There is only one way in which a physician can show bad faith in treating any patient—namely, by *not* endeavoring to benefit the patient.

If the patient who seeks aid of a physician chances to be an addict of morphine, there is only one way in which the physician can certainly benefit him—namely, by administering an adequate dosage of morphine. Other treatment may or may not be necessary. No FEDERAL LAW FORBIDS SUCH TREATMENT—with narcotics in adequate quantity, for any period whatsoever.

An "adequate" or balancing dose of morphine, for an addict of long standing, is, on the average, at least ten grains a day; and it may be twice or three times that, or even more.

No FEDERAL LAW forbids the reduction treatment of addiction, as such, in an ambulatory patient. A "regulation" of the Narcotics Bureau warns against such treatment; but no decision

of the Supreme Court ever sustained this ruling—if the physician is adjudged to have acted in good faith.

No LAW ON THE STATUTE BOOKS distinguishes between curable and incurable diseases associated with addiction. The "regulation" that permits treatment of incurable maladies only, is a barbarism that has never been sustained by the Supreme Court.

The question of DIAGNOSIS, whether correct or incorrect, has no status or bearing in statute law. If a physician honestly believes that morphine, in any dose, will BENEFIT THE PATIENT, he is entitled to give it; and no law on the statute books ever forbade him to do so—whether or not he makes any diagnosis other than "need of morphine."

The Supreme Court, in the Linder case, upheld the right of a physician to give morphine for pure addiction; so did Judge Bowen in the Ratigan case (October, 1934). To deny this right would be fundamentally absurd. Yet this absurdity has been stock doctrine of the proponents of the Blackmail Code from the outset—a doctrine still strenuously maintained in defiance of common-sense, law, and repeated decisions of the Supreme Court of the United States.

BOOK II

Execution by Code

Chapter IX

A Few Typical Cases

IT IS mildly amusing—if a paradox pleases you—to reflect that the trial in a Federal Court at Los Angeles, designed to close permanently the Narcotics Clinic, in which the Federal authorities opposed the State and municipal authorities, started on the day following that on which Attorney General Cummings announced his project for a Crime conference to *coordinate the activities of the Federal Government and the States* in the interests of law and order.

This most flagrant example of interference of the Federal Government with State authority (in opposition to the Constitution as interpreted by the Supreme Court) was still in progress at the time when the Crime Conference met at Washington. And the President made a speech about the endeavor to combat the "ravages of the illicit drug traffic" at the moment when the Federal Court was determining that seventy patients (minus a few that had died) must be thrust back into the hands of the illicit drug traffickers, from which the State and municipal authorities had previously rescued them.

Query: Does this illustrate mere dumbness or a Gargantuan sense of humor on the part of the Government representatives at Washington? Be that as it may, it spelled disaster for the Los Angeles outcasts. Let me briefly present case histories of a few of them, from official records.

First, a group who, in desperation, voluntarily presented themselves before Judge Thomas C. Gould, at the Lunacy

Commission Court, and begged to be committed to the State Narcotic Hospital at Spadra.

Judge Gould and his medical associates knew that these patients were not proper subjects for Spadra, since that institution is supposed to deal with curable addicts, and these were, by hypothesis, incurable, else they would not have been dealt with at the Clinic. But the Court could think of no other action that gave even a suggestion of promise, so it grasped at this straw.

Dr. Thomas F. Joyce, Superintendent at Spadra, was sympathetic—as who but a Federal narcotics agent would not be—but he had no resource. His official report, made to Judge Gould under date of July 11, 1934, reads as follows:

"I am calling your attention to the following cases who were examined at a special Narcotic Clinic held by our medical staff July 10, 1934 (names omitted).

Case No. 1. Committed by you May 29, 1934. It was found that this man was a constitutional psychopath with no chance whatever, we felt, of being reclaimed. He has spent two years at Fort Leavenworth and it was decided that the State has little to gain in attempting to relieve this man of his addiction.

Case No. 2. Committed by you July 2, 1934. This man was also found to be a constitutional psychopath and from his record and psychological examination it is felt he offers no hope of ultimate cure.

Case No. 3. Committed by you July 5, 1934. A former patient of the Los Angeles Narcotic Clinic. May I say this man is a constitutional psychopath. He has been receiving drugs for quite some time with a diagnosis of traumatic bronchitis and neuritis resulting from a bullet wound years ago. This man is characterized as a chronic narcomaniac and it was the unanimous opinion of the staff that the institution could in no way be of benefit to him.

Case No. 4. Committed by you July 7, 1934. Also a former patient of the Los Angeles Narcotic Clinic. This man is suffering from chronic asthma, bronchitis, and emphysema. He is also a constitutional psychopath and may properly be classified as a chronic narcomaniac. We feel it is a waste of time and money to attempt the ultimate cure of this man.

Case No. 5. Committed by you June 25, 1934. A former patient of the Los Angeles Narcotic Clinic. This man is found to be suffering from a neurological disorder that makes it absolutely unwise and unprofitable to attempt complete denarcotization. Profitable treatment for this condition might be obtained at some well-established neurological clinic.

Case No. 6. Committed by you July 10, 1934. This man is a constitutional psychopath classified as a narcomaniac. He offers absolutely no hope for an ultimate cure as far as this institution is concerned.

Case No. 7. Committed by your Honorable Court June 4, 1934. This man is a criminal addict for fifteen years. He has had numerous so-called "cures." He offers very little in the way of reclamation. We doubt if it is fair to impose the burdens on the taxpayer that this man's enforced incarceration here will entail. However, we have not definitely decided upon his case.

It is regrettable that the State has no place to colonize this type of incurable addict, but I know you will agree with me that it seems a waste of public funds to further experiment with this type of narcotic addict.

Respectfully submitted,
Thomas F. Joyce, M.D.,
Medical Superintendent,
State Narcotic Hospital,
Spadra, California.

The seven patients, then, are discharged from the Spadra hospital, returned to the Court, and sent out into the world on their own recognizance. What are they to do?

The simple answer is that they are to suffer and to die, unsolaced by medical attention. Their only hope of partial relief from perpetual agony of mind and body must be found in the dope peddler, who will furnish each of them the twenty cents' worth of morphine he needs daily—for about ten dollars. But where are the unfortunates to get the ten dollars? They cannot get it honestly. They are mostly too feeble, too ill, to be able to get the money by any method.

Their only effectual and practical resource, then, is to die.

Let me cite another official report that tells how a group of these outcasts found relief from suffering by that route. This report was written by a hospital physician, member of the Alienists' Court, who had first-hand knowledge of the patients —whose names are now given, because publicity cannot harm the dead.

Eddie Foyer, County Hospital case record No. 270-12 is said to have committed suicide because of the closure of the Clinic. He had been in the General Hospital many times, recently in February, March, April, and June of 1933. He had been in Spadra and dismissed as an incurable addict because of "intractable asthma." Registered with the State Narcotic Division for years. After his death, narcotic officers sent out the statement that he had asthma but was not an addict. Later they denied the asthma. As two or three unfilled narcotic prescriptions were found in Foyer's room, the officers declared he was peddling. If so, why hadn't he filled the prescriptions and cashed in? (Comment: He was, of course, an addict, and he doubtless held the prescriptions in reserve, against the possible time when he could not secure the drug from a peddler, for lack of funds. Somewhat as a man in New York, who was

found almost dead of starvation with forty dollars in his pocket, explained that the fear of being without money to buy morphine kept him from buying food.)

Alice Joiner, Case Hospital record No. 57-207, died a few days after closure of the Clinic. She had advanced tuberculosis, and withdrawal of the drug undoubtedly killed her.

Cloyd Peck, Hospital case record No. 57-240. Diagnosis, syphilis of the central nervous system; died immediately after closure of Clinic, undoubtedly for want of drug.

Harry Reed, General Hospital case record No. 112-208, an old case of pulmonary tuberculosis, died under peculiar circumstances a month after the Clinic was closed. Someone had written a prescription for Reed and a man had gone to a drug store to have it filled. The officers seized the prescription and rushed over to Reed's house. Reed's mother told the officers that her son was upstairs in bed. The officers rushed into the room where the patient was lying. In three hours Reed was dead—his mother asserts that the shock of having the officers rush in killed him.

Thomas Murphy, General Hospital case record No. 304-036. Diagnosis, pulmonary tuberculosis, died shortly after the Clinic closed. Could not obtain drug.

Madge Surber, General Hospital case record No. 56-502. Old case of pulmonary tuberculosis, examined in hospital many times; was murdered. She was the wife of a naval officer who is permanently disabled with tuberculosis. On the money she received from him she was able to live respectably and get her morphine from the Clinic prescriptions at reduced rates. When the Clinic closed, she became an "agent" for the Federal officers in order to get her drug. She was beaten to death by three Negroes because she was acting as stool pigeon. The credit for her murder goes to the narcotic (official) activities.

William W. Colson, died August 31, 1934, at 10 P.M. in

Ward 290 of the Los Angeles General Hospital (No. 9-899 of the records). Colson was a diabetic and a drug addict. The hospital could furnish him with insulin but not with morphine. So Colson went into Court and Judge Gould committed him to Spadra. But Spadra dismissed him because he could not be taken off the drug without endangering his life. He wandered around in misery for a little while and then returned to the Insanity Court and begged to be sent again to Spadra. That was on the morning of August 31, 1934. The Court dismissed the case, but the patient was so sick that the hospital could not throw him out on the street. That evening he collapsed for want of morphine, vomited, and was so convulsed with pain that he fell out of bed and wallowed on the floor. No morphine was given him, and he knew the futility of asking for it. He *did* ask to be strapped to the bed so that he could not fall and hurt himself, and this was done. He was dying, and everyone knew it—knew also that a dose of morphine would save him. He did not get it, and he died—of morphine withdrawal—at ten o'clock that night, in great agony.

William Palmer, died at 5:45 A.M., November 2, 1934, in Ward 110 of the Los Angeles General Hospital. Cause of death, heart failure for want of morphine. Hospital record reads: "Wm. Palmer was arrested by Inspectors Creighton and Breckner on October 31 (1934), for a supposed sale of morphine and was booked at the city jail for the charge of State poison. His age was 52 years. He died in the L. A. County Hospital this (Nov. 2) morning at 5:30. Dr. — of Compton was prescribing for him. His diagnosis was Advanced T. B. and he was getting 90 grains of morphine per week. Hospital Record shows that he had had no narcotic for two days. Dr. Paul F. Seitter, Interne on Ward 110, states that the patient did not have a hemorrhage, but died of straight narcotic withdrawal."

I am not sure that comment can add anything to these simple

official records. Nevertheless, at risk of anticlimax, I append a few statements, by way of perhaps needless elucidation. I do this because the bald facts are so implausible as to be almost incomprehensible. The records do not make sense. Yet they are simply true.

That is to say, these are patients whose mortal illness was attested by competent physicians, acting in official capacity as authoritative representatives of State and County; who received no compensation for their examinations of the patients, and had no possible motive for making diagnoses except in accord with their best professional judgment.

The unanimous judgment of these hospital physicians was that these patients were incurables, suffering from painful maladies.

Let it be recalled that the Narcotics Clinic, where these pa-

ON BEHALF OF THE BUZZARD

DOCTOR: "But she'll die if she doesn't get this prescription."
NARCOTIC AGENT: "And you'll get the Pen., Doc, if she does get it."

tients had received treatment, under the conditions just stated, was an institution conducted at the County Hospital, under auspices of the Los Angeles County Medical Association (upward of 2,500 members), in cooperation with the Board of Health, with active support of the Mayor of the city and the enthusiastic approval of the Public Welfare Association and the State and municipal Narcotics authorities.

As to the latter point, two State narcotics officers had personally requested the chief Clinic physician to examine patients sent in consultation, and apply Clinic tests and methods. And the chief State Narcotics Agent, Mr. Jack Harrigan, had personally visited the Mayor and urged him to use his influence for continuance of the Clinic (at a time when there was question of resignation of the chief physician, on plea of lack of time), giving the Mayor a list of the Clinic patients (*including those in the groups above presented*) with specific citation of the amounts of morphine they were receiving, and definite request that this treatment should be continued.

Please read over again that last long sentence. Note that the man who makes the request is the *chief Narcotic Agent of the State*. Why did he make the request? Because, as he stated, it was his observation, and that of his colleagues, that the Clinic treatment of these patients had restored such of them as were before delinquent to lawful and normal manner of living; at the same time, and by the same token, restricting the market of the dope peddler, and lessening the work of narcotics officers, police in general, and police courts;—in a word, making for law and order, even if the humanitarian aspects of the question were ignored.

So there you have the estimate of State and municipal officials as to the work of the Clinic. And you feel the grim humor of the Attorney General's proclamation for a Conference to coordinate the State and Federal forces, put forth in the hour

when three Federal officials of relatively high degree were riding roughshod over State, county, and municipal authorities, and closing the beneficent Clinic which all other persons in authority were sedulous to maintain.

As I said, this simply does not make sense. But I cite the unchallenged records.

Chapter X

What Would You Do?

HERE are a few more typical cases of drug addiction presented in tabloid form from the inexhaustible archives of the splendid White Cross Society of Seattle, an association outstanding among the few philanthropic organizations that have a clear comprehension of the actual nature of the misnamed narcotics "problem." (There being, in fact, no narcotics problem as ordinarily conceived; but only the problem of arousing the people at large to an understanding of the narcotics *situation*—to an exposition of which the present book is devoted; as the efforts of the White Cross Association have been these many years.)

Case 1. Age 37; born in Illinois. Graduate Normal School. Parents very fine people. Both educators. Father dead. Mother teaching. He was teacher in Normal School. During Prohibition began partying, taking drugs for a hangover. Eventually gave up liquor and used drugs solely. Drifted west. Became hotel clerk. Married an addict. Now operating a card game, securing a living anyway possible. Wife is a high-priced prostitute.

Comment: From Normal School teacher, of fine antecedents, to operator of a shady card game. Does this not clearly show the degrading power of drugs? Indirectly, yes. But you miss the point if you suppose that it was the *taking* of drugs that caused the degradation. There is every probability that he would still be a respectable and respected teacher had he been able to secure the morphine he had come to need in any legiti-

mate and legal way, at a reasonable cost. His descent was due to the embargo on such attainment. Not morphine as such, but the difficulty in securing the drug except illegally and at a prohibitive price, was his undoing.

"His wife is a high-priced prostitute." This also is typical, and, *mutatis mutandis,* the same comment holds. Sometimes it pays to be a girl. Fairly good-looking and intelligent young women who acquire the drug habit have the advantage over their brothers. There is a well-paying profession open to them—a profession where, as General Booth once pointed out, the novice draws the highest income. Morphine does not excite passion, but quite the reverse. Unlike alcohol, it is not responsible for the downfall of girls, but is rather a restraining influence—a sedative rather than an excitant.

But young women who become addicts in America enter the ranks of prostitutes almost as a matter of course; because not otherwise can they secure the money to meet the exactions of the dope peddler.

The authorities of the Narcotics Bureau and the Department of Justice are thus responsible for recruiting the ranks of the oldest profession. No professional pander competes with them.

There are hundreds of prostitutes who might with full propriety address to these narcotics officials the words of the once-popular dance-hall skit:

"You made me what I am today;
I hope you're sat-is-fied."

And so far as can be judged from the actions of the officials, they are. They keep up their illegal activities in a way to suggest something akin to sadistic joy. Here are a few other instances of their handiwork of which they will doubtless read with pleasure, if these lines chance to reach their eyes:

Case 2 and 3. Married couple, born Iowa and Seattle. Age

32 and 28. Prominent business man. Owned apartment house, several automobiles; worth approximately $75,000. He became addicted while in business. She followed shortly after. Today they are ruined. She is a prostitute; he is no good.

Comment: Two birds with one stone. Something to boast about. They might possibly manage, say, ten or fifteen dollars a day, to pay the peddler. But the toll for two—twenty or thirty dollars a day? Not a chance in the world, by honest means. Except, of course, that oldest profession—where the background of culture insures fine patronage for a time.

The next case is less alluring from the sadistic standpoint, yet it has its points:

Case 4. Born Michigan. Age 39. Married. Salesman. Later business man. 32nd Degree Mason. Could not stand prosperity and started drinking; switched to drugs. Lost business. Unable to secure employment. War veteran; pension $47.50 per month. Now steals typewriters in high schools for a living. Wife obliged to support herself, though loyal to him and hopeful of cure. Very well educated, fine woman. Working on night shifts in baker shop. This is the aftermath of a beautiful home, automobiles, servants, etc.

Comment: Wife hopeful of cure. She is indeed an optimist. For she lives in the one country in the world where it is forbidden even to *attempt* to cure such a case as that of her husband. (Not forbidden by law, to be sure; but by a Code that operates as law.) The one physician in the city where he lives who has dared to endeavor to cure such cases, by the rational method of personal administration of the drug in reducing doses, has been twice arrested, and the second time convicted, because he dared to defy the Code, and attempt to rescue the victims of the sadistic conspirators. Mrs. J. will soon learn that bake-shop wages do not pay the peddler. With her background, however, she should have no difficulty in making good

at the other profession, if she can bring herself to make the plunge. No doubt the coadjutors are watching with interest her solution of the dilemma.

And here is a case no less attractive in its way, though from a different angle. Here there is the satisfaction of feeling that one has the victim fairly trapped—even the one way out being closed. It is gratifying to reflect, too, that there are thousands of others in the same predicament. This case, like the others, is typical—at least in the cities where the Narcotics authorities have their local reigns of terror in full sway. (Some isolated cases in small towns, where there is no dope peddler, are not worth bothering about.) I cite the case chiefly because the outline ends with a question, propounded by my White Cross informant.

Case 5. One of two sisters. College graduate. Employed in office. Parents dead. Out with boys and had an automobile accident. Injured spine. Confined to bed. Had several physicians. Since Ratigan trial of 1934 no physician will give her morphine prescriptions for more than three months. The case is within the law *BUT* no physician is convinced that some day he will not be hauled into court for treating the crippled girl. This has been going on for several years. What would you do if this was your daughter?

Comment: What would *you* do, dear reader, if this was *your* daughter? Hopelessly crippled. Suffering perpetual agony, unless under the pain-quelling influence of morphine. And no physician dares to give her the medicine regularly for fear of being arrested.

Even after Dr. Ratigan, the most courageous of physicians, was acquitted, the other physicians were still afraid. And they had good cause. For the narcotics sleuths, chagrined at the acquittal, camped on the physician's trail, with new stool pigeons, and again arrested him, on charges identical with those

of the prior indictment—virtually putting their victim twice in jeopardy for the same alleged offense.

And the second jury, with identical evidence and the same judge presiding, found the physician guilty, on thirteen counts—which might, under the law, justify a prison sentence of 65 years and a fine of $26,000. (The sentence actually imposed was seven years at McNeil Island prison and a fine of $10,000!) The case will be appealed, of course; and the ultimate outcome should not be in doubt—for the physician had violated no law and infringed no principle of medical ethics.

But in the meantime—during the years before the case is finally settled—what is to become of the crippled college graduate, whose sister supports her and could pay the pharmacy price for medicine, if permitted to secure it on prescription, but who cannot possibly pay the peddler price, even if she knew how to make contact with the underworld or could bring herself, in desperation, to make the endeavor?

What would you do if you were this girl's sister? If the physicians dared not give her the medicine before, they certainly will not dare now, after Dr. Ratigan's conviction. The coast is clear for the dope peddler, as the narcotics authorities planned. What would you do? Or, stating the matter in practical terms, what can her sister do? Where is salvation to be sought?

The answer is humiliating, but inescapable. This crippled girl's only hope would lie in removal to another country. If she could be moved to Canada, a short trip from Seattle, she could be given the needed treatment. If able to make a sea voyage, she might go to Japan. Or to any other country. *Anywhere* in the world, outside the United States, she could be humanely treated.

Anywhere else. A humiliating thought, is it not? *In one Country only, in the civilized world—or, for that matter, the*

uncivilized world—is it forbidden to give solace of medical treatment to sick people who are in agony, even unto death.

I venture to predict that the time will come when that historical fact will be the chief outstanding anomaly to mark the record of political activity in America during what I have characterized as the Medieval epoch 1914-1938.

As I said at the outset, it is a record of which one may well be otherwise than proud.

INCURABLE MALADIES COMPLICATED BY ADDICTION DISEASE

The Narcotics Code ostensibly permits morphine treatment of incurable maladies "such as syphilis of the central nervous system, advanced tuberculosis, and other maladies well recognized as falling within this class."

The dosage of morphine is left entirely to the discretion and judgment of the physician. Any other ruling would be obviously absurd, since no layman is expected to know anything at all about dosage of morphine under any circumstances.

But the interpretation of the law by prosecuting attorneys (and narcotics agents before them) is subject to the SUPERSTITIOUS DELUSION THAT THERE IS SOME MORAL SIGNIFICANCE IN THE USE OF MORPHINE. This superstition is precisely kin to the old superstition that insanity denoted demoniacal possession. It tinges the whole legal procedure in connection with addiction, and the prescribing of morphine by physicians.

It is the constitutional right of every individual to smoke cigars if he wishes to, even though tobacco is very harmful to him. It is equally his constitutional right to take morphine if he wishes to, even though it be harmful to him. Superstition aside, there is no moral significance in either act, in the legal sense—any more than in the allied vice, for example, of overeating, which is far more harmful than either of the other vices, in that it causes far more illness and results in far more deaths.

If, then, a physician is legally entitled to give morphine to a patient for his PATHOLOGY OTHER THAN ADDICTION, what possible moral or legal significance can there be in the question of the AMOUNT of morphine given? That is purely a medical question. To give morphine in quarter-grain doses for permanent relief of ASTHMA, in a

patient whose system has become accustomed to the presence of, say, five grains of morphine as a regular component of his blood and tissues, would be as foolish and futile a procedure as to give one-grain doses of quinine to a person whose system was saturated with the poison of the malaria germ.

To attempt to make any moral or legal distinction between the giving of one-quarter grain and five or ten or fifteen or twenty grains of the medicine, WHETHER MORPHINE OR QUININE, would be as foolish in one case as in the other. In each case, it is merely a purely medical question as to how much of the remedy is required to attain what is commonly spoken of as "balance"—the condition of approximate normality of action of the particular individual who is under treatment.

The clearing away of the MORPHINE-MORALITY SUPERSTITION would do for the victim of drug addiction disease what the clearing away of the DEMONIACAL-POSSESSION SUPERSTITION did for the INSANE.

Chapter XI

The Murder of George Christensen

IT HAS been suggested that the Narcotics Code was responsible for the death of many thousands of sufferers from addiction disease within a few months after it was put forth. The immediate mortality, however, may be presumed to have been relatively slight, in comparison with the ultimate toll.

The great majority of addicts do not die immediately as a direct result of withdrawal of the drug. Their suffering is great, but not instantly mortal. And when, after a term of years, they succumb to some intercurrent malady (commonly tuberculosis), the causal relation between drug deprivation and the onset of the malady may not be recognized. Drug addiction, as such, is comparatively seldom mentioned as chief cause of death in official records.

Confusion has arisen from the observed fact that the mere habitual use of opiates, constituting the "drug habit," does not appear in itself to tend to shorten life. The bodily functions become acclimated, so to say, quite as they do to the habitual use of caffeine or of tobacco, and a balance is struck that constitutes at least a close approximation to normality.

The average intelligent addict strives constantly to keep the daily dosage at a minimum, and he has little to fear so long as he is sure of being able to secure a quantity adequate to meet that need. His troubles begin when anything interferes, or threatens to interfere, with the supply. Then the factor of worriment enters, and that, unfortunately (through effect on

the adrenal gland presumably) tends to increase the need of the drug—calling for a larger daily dosage.

Thus a vicious circle is started—which in reality is a widening spiral that has no end this side the grave. Let me cite a typical illustration.

On the 4th of March, 1936, a man named George A. Christensen died in the Los Angeles County General Hospital. Cause of death, as officially recorded: "Far advanced bilateral tuberculosis. Morphine addiction." The death certificate thus follows precedent in naming tuberculosis as the direct cause of death. In reality, however, the lung disease was only an intercurrent condition—an incidental condition, so to say. The cause of the lowered vitality that made the patient susceptible to tuberculosis was morphine deprivation, of periodic recurrence, extending over a term of years.

In effect, death sentence was pronounced on this man by the Federal authorities, when they closed the Narcotics Clinic in the summer of 1934.

Effectively, the sentence was "death by torture, with no definite date fixed for the culmination." The victim's power of resistance proved adequate to prolong the torture-period over a term of about twenty-two months.

The arrest of the chief Clinic physician took place April 24, 1934; Christensen did not die, as just noted, till March 4, 1936.

But death would have been very welcome to him months before it came. In ceaseless distress, he had maintained a slender hold on life, in a world that had no place for him.

Since early manhood, Christensen had been handicapped by a malady or complication of maladies that no physician was able clearly to diagnose. For many years, the lungs were not obviously involved. Some physicians located the trouble rather vaguely in the abdominal cavity; others in the brain and nervous system. A surgeon operated, removing the appendix.

When that gave only temporary relief, he operated again, explored the abdomen, but found nothing to throw light on the symptomatology.

There were periods of vomiting and prolonged nausea, and one physician reported that nothing but morphine had been found to control this condition. Nothing else controlled the visceral pains, as attested by various physicians. One physician reported "gastric crises" treated from time to time, but admitted that the term had no clear pathological meaning in his mind.

A dental surgeon x-rayed the patient's teeth; found eight "badly abscessed teeth," which he removed and curetted the sockets, "thinking this would relieve his trouble, but this has not accomplished the desired result."

Nothing accomplished the desired result; and diagnoses ranged from "toxic colitis" to "a neurosis, a hysteria, or some other non-organic disorder." Meantime the patient suffered unbearable pains, and found relief only in narcotic drugs. Whatever his original malady, in the course of years there was imposed on it the condition of drug addiction. The abdominal operations had been performed in 1920. By 1927 he had become an habitual user of morphine.

An honest, respectable and self-respecting jeweler, moderately successful in business, with a wife and two children, he found himself in the terrifying position of absolute dependence on a drug that no druggist dared sell him and no physician dared prescribe. When he could secure eight grains of morphine a day (say a quarter's worth), he was comfortable, normal, mentally and physically efficient. Failing to secure the medicine, he was a physical and mental wreck, in perpetual torture.

The obvious solution of that would seem to be—pay the quarter and get the medicine. In any other country in the world—in Italy, Germany, Russia, let alone France, England,

or Scandinavia—that would have been the solution. In all civilized countries but one, drug addiction is recognized as a disease calling for medical attention; and the individual who needs medicine is permitted to receive it.

But unfortunately for Christensen he lived in the one country where medieval superstition still prevails—the one country where sick people of a certain type are considered to be beyond the pale of human sympathy or pity. So he was driven from pillar to post for several years, going downward in the social and economic scale—seeking aid everywhere, and finding it nowhere.

Then, finally, bearing letters from the Chairman and three members of the Narcotic Committee of the Los Angeles County Medical Association (sympathetic physicians, who dared not treat him personally for fear of the Federal authorities), he found refuge at the office of the municipal Health Officer, Dr. George Parrish. This benevolent official was by way of establishing a Clinic where such cases could be cared for. Christensen was received there as a patient—in spite of his doubtful pathology—and later, when the Clinic came under the auspices of the County Hospital, he continued to receive attention.

During these years, he was restored to normal business and social activities. It was as if he had indeed migrated to another country. He received the medicine he needed, as he would have received it in Europe or Japan or Australia, and—though far from being a well man—he was relatively comfortable, and able to function as a normal member of society.

Then came the thunderbolt of the Federal mandate, closing the Narcotics Clinic. And from that hour, Christensen was doomed. Again he had no resource but the dope peddler. Again he became an outcast. Now he could secure no medicine except illegally, and then with no regularity, for lack of

funds. His old maladies reasserted themselves, and new ones developed. His lungs were now affected, as is usual under such conditions.

He sought aid at the County Hospital, but could find no solace there, because they no longer dared to defy the Federal authorities by giving the only medicine that could relieve him.

A physician who himself dared not risk treatment had written this letter:

"Mr. George A. Christensen of 1422 W. 37th St. needs hospitalization. He is suffering from (1) hypertension, (2) generalized arteriosclerosis and (3) chronic bronchitis. He is also an incurable narcotic addict receiving 56 grains of morphine weekly. I hope that you can do something for him."

The hospital put the letter on file, and the patient went his weary way. Then, as a last resort, he appealed to the Lunacy Court, where Judge Bullock presided, with the technical assistance of two alienists. One of the alienists reported:

"He is a medical addict, and narcotics are necessary to sustain his life. He has been examined here in this hospital a number of times and has been considered a medical addict and needs morphine to overcome his physical condition. He was a member of the Clinic for a number of years. I do not know whether they would consider taking him at Spadra (the State Hospital for Addicts)—they have returned others. But I do not know what else he can do. No one is going to prescribe for him. The only thing left for him is to die."

The other alienist wrote:

"I have known this man several years. He is a sick man, and entitled to just the same consideration as any other sick person. The interpretation of the law by the officers persecutes this man. He will die if he cannot get the morphine he needs. It is possible that his other symptoms may subside if they take him at Spadra. I think it is worth while to send him there.

This man is deserving of every sympathy. It is a pure case of persecution when a man cannot be treated when sick, no matter what is the matter with him. I recommend commitment for his sake. He has a narcotic addiction disease."

So the sick man was sent to Spadra. But that institution is designed for the cure of drug addiction, and Christensen had long been known to be incurable. The physicians did what they could, but it was evident that the morphine could not safely be withdrawn. The Assistant Superintendent, under date of January 31, 1936, wrote:

"This man has been bedridden since his admission, and due to his weak physical condition we are unable to complete a withdrawal of narcotics. He has chronic myocardial disease, hypertensive arterial disease, asthma, and pulmonary tuberculosis also will have to be ruled out. I have been unable to get X-ray pictures, due to his weakened condition. He is very badly emaciated, and for the last few days has lost sphincter control. Urine shows some albumen and pus.

"Since we are not equipped to handle cases of this type, I recommend that this man be returned to the committing court so that he may have general hospital care. At the present time I feel that it is inadvisable to completely withdraw narcotics from him. He is now getting one-third grain three times a day, and that seems to be the minimum that he can get along with."

It was much *less* than he could get along with. But at the hospital he could not get even that. The two chiefs of the psychiatric division were actually under indictment at the time for their administration of narcotics in connection with hospital service. The Federal policemen had warned the hospital against using morphine in such quantities as the physicians had thought essential. One physician had been warned against

even the administration of apomorphia, which is used solely as an emetic. Los Angeles was living under what has been aptly termed a reign of terror, and even the Health Commissioner dared not treat a single case of drug addiction. The President of the County Medical Association (an organiation having more than two thousand members) had thrown up his hands at the very thought of defying the Federal authorities.

So any physician who had attempted to solace this patient—victim now of half a dozen incurable maladies—would have made a bid for the penitentiary. At last, however, Christensen was to find a way of outwitting the Federal authorities. On the fourth of March, 1936, he died. Thus finally he demonstrated that his symptoms were not altogether faked. All things come to him who waits.

Does it please you to think that you live in the only country in the world where lingering executions like this are carried out systematically day by day, with narcotics policemen of the Federal Government standing by, to see that no guilty man escapes?

EXEMPT PREPARATIONS

When the Harrison Narcotics Law was passed in 1914, representatives of patent and proprietary medicines were busy in the lobby, with the result that a section was tacked on to the Act, providing that its exactions shall not apply to any preparations that contain no more than two grains of opium, one grain of codeine, a quarter-grain of morphine, or an eighth-grain of heroin to the ounce.

Presently an anomalous situation developed. An addict could go to a drug store and, over the counter, secure the drug he needed, with perfect legality; whereas, had he secured the same drug on a doctor's prescription, he might be indicted for a felony, and along with him the doctor who wrote the prescription and the druggist who filled it.

The amount of opiates put out in exempt preparations is about one-fifth of the total legitimate importation, year by year;—a quantity which, if all of maximum strength, in two-ounce bottles, would make an unbroken line (a pipe-line of "dope" so to speak) from New York to Los Angeles. For prescribing an infinitesimal fraction of this quantity

of the same drugs, 25,000 physicians have been arraigned as criminals, and upward of 3,000 have served sentences in Federal Penitentiaries, which seems a bit paradoxical.

And, to cap the joke, the Bureau that arraigns the physicians and permits the babies of the nation to get tons of "dope" without medical supervision, has been actively engaged for several years past in the ardent endeavor to prevent the administration of the same drugs to race horses—though just what the moral implications may be of such administration of a sedative is not quite clear.

CHAPTER XII

Execution by Code

PERHAPS, now, a few words of interpretation may not be amiss, to make unequivocally clear the rationale of death by torture as administered to Christensen and to tens of thousands of similar cases during the past fifteen years. It may be urged that nothing in the Harrison Act prohibits the treatment of such a case; and that even the Narcotics Code contains a clause expressly permitting the treatment of "exceptional cases" where addicts suffer from other incurable diseases. Why could not Christensen be treated under this exempting clause by any physician?

The answer is found, by implication, in the words of the exempting clause itself. These occur in the famous Article 85 of the "Regulations" of the Internal Revenue and Prohibition officers. This article declares that a prescription issued to an habitual user of narcotics for the purpose of "keeping him comfortable by maintaining his customary use" is not a legal prescription (the writer, the recipient, and the filler of such a prescription are all pronounced felons). But exception is made:

"In the treatment of incurable disease. Such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class . . ."

"Cancer, advanced tuberculosis, and *other diseases well recognized as coming within this class.*"

What are these diseases, please? And by *whom* are they *well recognized* as coming within *this class?* At least a score

of physicians of exceptional repute examined Christensen in the course of ten years or so. All agreed that he was a sick man, but no two physicians made precisely the same diagnosis, and no one physician felt sure that his own diagnosis was correct.

I have before me letters and reports of fourteen physicians, most of them holding official positions in hospitals and medical societies; all of them men of competence and exceptional skill in their various specialties; and they name more than twenty pathological conditions as observed or suspected in the case of Christensen. Yet not one of these men would have been justified in saying that the patient had a definite malady "well known as falling in" the class of cancer and tuberculosis.

The patient died of "tuberculosis" ultimately, but that disease had not so clearly manifested itself as to be even suspected in earlier diagnoses. It was named only tentatively, for the first time, *less than five weeks before the patient died.*

What, then, would have been the position of any physician who had prescribed for the patient the eight grains of morphine he needed, naming an incurable disease—"in the class of cancer or advanced tuberculosis"—as the justification for the "exemption"? Why, inevitably the physician would have been called on by the Federal narcotics authorities to justify his diagnosis—this being the invariable custom. And then a dozen other physicians would have been called, and forced to testify, however reluctantly, that they had examined the patient and failed to find any symptoms of the malady named. Even had "tuberculosis" been the diagnosis, there would be hospital records available to show that examinations made by hospital physicians contain no mention of that malady.

And the sequel? Why, statistically, the chances are ninety-five in a hundred that the physician who treated the patient in all honesty, out of sheer compassion, would be convicted of the felony of "violation of the Harrison Law," and subjected to the

possibility of a *two-thousand-dollar fine and five years in the penitentiary* for each and every prescription written.

Does this seem fantastic? It *is* fantastic. But I am citing merely the conventional method of the Federal narcotics authorities in dealing with any physician who dares to prescribe narcotics for any sick man or woman, the subject of addiction disease, who is not actually and permanently bedridden. Any physician who prescribes narcotics for an addict who is able to come to his office (no matter what the other maladies that afflict the patient may be) invites disaster—and may be sure the invitation will be accepted. The court records of thousands of cases prove it.

But just what is the point? Simply this: A patient able to visit a doctor is also physically able to seek a dope peddler—and will do so if prevented from going to the doctor.

That is the whole story. A permanently bedridden patient is out of reach of the dope peddler. From the standpoint of the peddler, he is a lost customer in any event. From the standpoint of the peddler's coadjutor, the Federal narcotics agent, it would be dubious procedure to arrest the physician, because, even with the aid of a friendly judge, it might be difficult to convince a jury that it is a felony for a physician to give solace to a patient who is actually on his death bed.

Meantime, however, the majority of physicians have become so thoroughly terrorized that they hesitate to prescribe the needed narcotic for even a moribund patient who is an addict, whatever his other maladies. The case of Christensen illustrates that point. And the case is typical of tens of thousands.

Had any one of the dozen physicians to whom Christensen applied—after the Federal authorities closed the Clinic—been courageous enough to prescribe for him the eight grains of morphine that he needed—that physician would have been arrested and probably convicted of felony. Which is not what

I started to say. What I mean to say is, that if Christensen had in any way been able to get eight grains of morphine day by day (had he, for example, been able to emigrate to *any* other country—I had almost said any *civilized* country) he would, in all probability, have lived many years longer. He did not really die of tuberculosis. We have seen that tuberculosis was not even clearly diagnosed a few weeks before he died. "Tuberculosis" on the death certificate was a mere camouflage word. Nor was it accurate to add "morphine addiction." The patient did not die of morphine addiction. *He died for lack of morphine.*

And the "Government" that forbade him to receive the medicine without which he could not live, was the sick man's official executioner. That may not be a pleasant thought, but it is inescapable.

A cruel execution, certainly; but not unusual, since tens of thousands of victims have gone to their doom along the same route in the years of dominance of the Narcotics Code.

Christensen was the eighth known victim among the little company of seventy Clinic patients whom the Federal authorities turned back to the dope peddler. I think I am right in saying that no physician who attempted to solace one of these victims escaped arrest by Federal authorities. At the time of Christensen's death, three physicians of the hospital staff (two of them former Chairmen of the Narcotics Committee of the County Medical Association) were still under indictment for their humane and gratuitous work in conduction of the Clinic.

One physician had been tried, convicted, and given a two-year sentence (with probation), because he examined a stool pigeon addict in his office, in the regular course of his professional business, and correctly diagnosed the case, without administering or prescribing narcotics or giving treatment of any kind.

Another physician, enmeshed in the same entrapment enterprise through which the Clinic was closed, was given a year's prison sentence, *without probation,* for treating a stool pigeon addict whose pathology was far more pronounced than was Christensen's—so far advanced, indeed, that he died a few months later, even though, as a Government employee, he was able to secure the morphine (from ten to twenty grains a day) to meet his addiction needs.

This patient was able to conserve the morphine prescribed by the physician, and exhibit it in court, *because the Government supplied him, or permitted him to secure, an equal quantity of the same drug day by day.* On the witness stand, he admitted that he had had his "shot" that morning. And the United States prosecuting attorney stated (when defense counsel asked to have the witness deprived of the drug) that if the morphine were withheld "we would have a maniac on our hands."

Do I make the case clear? For prescribing for this patient (supposing him to be a movie actor, and knowing that he could not continue at work, or even maintain sanity without the drug), the physician, who at the same time treated the patient for syphilis of the central nervous system (of which, presumably, he died a few months later)—for prescribing a minimum quantity of morphine for this patient, in connection with antisyphilitic treatment, this physician was convicted of five felonies (one for each prescription), and given sentence of thirteen years imprisonment, adjusted to run concurrently so as to involve one year of actual prison confinement and five years' probation, during which time no narcotics must be prescribed.

If I have made myself understood (the bare recital seems so fantastic as to challenge credence; but I speak by the record and from personal knowledge)—if I make myself understood, I think you will not wonder that no physician dared to give

solace to the unfortunate Christensen, whose tragic story is above epitomized.

I hope I have made apparent the pertinence of the chapter-heading, "Execution by Code."

I venture to hope you have found it an edifying story. Think of the story as typifying perhaps ten thousand cases per annum for the past fifteen years, and you begin to envisage the essentials of the period of Dark Age history which I speak of as the time of the American Inquisition.

STORY OF A WOMAN DRUG ADDICT

(Taken from the Congressional Record for June 30, 1922. The original is a letter sent to Congressman Dr. Lester D. Volk, and by him introduced in connection with his speech on the Necessity of Drug Investigation. By Nea Service.)

"I am a nurse 43 years old, a widow with one son. I have been a morphine addict for more than twenty years. My son was born an addict, but I cured him in babyhood—the only time, it seems to me, when addiction can be cured.

"When I was twenty I became ill with appendicitis and a complication of internal troubles. I was sick for three years and had many treatments, and finally had to be operated on.

"The doctors gave me morphine, but never steadily enough to cause addiction until the last attack, which lasted seven months.

"The doctors stopped the morphine at the time of the operation. They lectured me about will power and warned me not to let the morphine get a hold on me. I never had any enjoyment out of it, except relief from suffering. But the damage was already done.

"When they stopped the morphine, I became a wreck. I could not sleep. I was deathly sick.

"I was without morphine for two or three months. Pains, weakness, nervousness, and sleeplessness were driving me insane. I had to have relief. I thought I could take morphine to relieve my suffering and quit when I was well.

"I married before I fully realized I was an addict. When I finally found out that I could not stop the morphine I was nearly wild with suffering. My husband and I talked it over and he finally insisted that I must stop trying to do without it.

"Then we began a search for some doctor who would save me. We tried and tried, without success—and then baby was born.

"He was a fat, healthy-looking baby. Then suddenly the nurse wouldn't let me see him. I knew something was wrong.

"I got up out of bed and went to him. He was blue and drawn and looked as if he were dying. He looked just the way I did when I needed morphine.

"We sent for the doctor and told him our fears. The baby seemed to be dying and the doctor gave him a little dose of morphine and in 20 minutes he was fine and quiet, with a good color and a healthy look.

"My baby had been born a morphine addict.

"I had the most awful ideas of killing myself and the baby, too. And then I made up my mind I would save him somehow.

"It tore the heart out of me to see the way he suffered. He would draw up his little legs and shriek and moan and you'd think he would cry himself to death.

"I insisted that he should not have any morphine except just when it would keep him from dying. He only got a few doses, but for 18 or 19 months he was awfully sick.

"We stuck it out, and my baby lived and began to get stronger, and was completely cured.

"But now I am terrified at what will happen to him if anyone ever gives him an opiate in case something happens to him.

"What I need is another operation. But I can't because there is no hospital I can find that will take care of my addiction.

"I wish I had died when I was born. Or that my son had died in those first awful days.

"Addicts like me, accidentally placed in the grip of a terrible disease, are hunted like criminals under present laws.

"Recent interpretations of laws placing narcotic administration in the hands of laymen who have no medical knowledge of addiction have made things worse for thousands of accidental addicts like myself, who now must have opiates to live.

"Everything is playing into the hands of the peddlers. Out of the hysteria they are getting rich.

"The trouble is the public knows only about the underworld addict. They class the rest of us, honest and law-abiding, with criminals."

Comment: Try the mental experiment of putting yourself in the predicament of this intelligent, law-abiding woman. Understand, then, that her troubles, instead of being by way of relief, were only beginning. Congress was to do nothing. New York was to shilly shally with tentative narcotics laws,

presently repealing them all; and then settling under the sway of the Blackmail Code.

I know nothing of the further history of the writer of the letter, but one knows what happened to tens of thousands of similar cases. They were presently denied absolutely the privilege of receiving any morphine legally. No physician dared prescribe for them at all.

There remained no resource but the dope peddler. Once in his toils, under stress of paying five, ten, or fifteen dollars a day for the drug absolutely required for maintenance of sanity, the sequel was certain. Not for long would the victim be able to declare herself honest and law-abiding.

Her only choice lay between suicide and entrance upon the life of the underworld that she had looked on with such horror. Vast numbers in the aggregate found suicide the less repellant course. Dr. Lichtenstein comments on the number who locked themselves in rooms where they could get no drug, and then, when the torture of deprivation became unendurable, jumped from the window. Others went on sea voyages, and jumped overboard. There were two suicides in a single day among addicts confined in the Tombs prison in New York.

Other thousands who were not recorded as having committed suicide, had purposely taken overdoses of the drug, and thus found the short way out.

And the major part of these cruelly executed victims of Bureaucratic fanaticism or lust or greed would have lived out normal, useful, productive lives had they been permitted to secure by legitimate means a few cents' worth of medicine from day to day—medicine without which they could not live; and which, by the worst appraisal, would have harmed them no more vitally in body, mind, or morals than you and your friends are harmed by the cigarettes that you nonchalantly puff or the cocktails and highballs that you quaff lightheartedly.

CHAPTER XIII

A Game of Bluff

AS YOU scan the record of the closing of Narcotics Clinics by Federal authorities, this question has perhaps come into your mind:

Under what Law does a Federal Bureau have authority to "order" the closing of State or municipal institutions engaged in a humane and beneficent enterprise?

The answer is very simple. Under no statute—no written law. The predatory act is backed merely by the law of human nature which makes us all cringe a little (or a good deal) at the magic name, the "Government." It is just a game of bluff, with no legal backing whatsoever.

But how, conceivably, can such a game be worked over and over, in half a hundred communities, from Coast to Coast?

Now the answer is not quite so simple; yet there is no mystery about it. The bluff works because it has back of it an organized company of Federal authorities who stand ready to cooperate in support of a mandate which a Government Bureau issues in the *alleged* interests of law and order and the "peace and dignity of the United States." And you may be sure that such blatant claims are trumpeted by the Narcotics Bureau whenever it makes descent on sponsors for any Clinic that is rescuing customers from the dope peddler.

If it is found necessary, in order to break up the Clinic and support the dope peddler, to bring suit against the physicians who conduct the Clinic, the United States Attorney, tipped off from Washington (at least he will so assert), will bring an

indictment that names no factual crime (there being none to name), but which asserts that the writing of a prescription was an overt act "contrary to the statute made and provided and subversive of the peace and dignity of the United States."

And, with rare exceptions, a Federal District Judge can be found who is either ignorant of the Law or *susceptible to the right influences* for the upholding of the illegal depradation of the Narcotics Bureau.

Even so, it is interesting to note that in recent years the Narcotics Bureau has not had the audacity to support its bluff with any written order, nor to claim that it has any legal right to stop a narcotics clinic from functioning. The decisions of the Supreme Court in the Linder case, the Boyd case, the Nigro case, the Strader case, etc., declaring that the Congress never intended to attempt the unconstitutional absurdity of regulating the practice of medicine, have not been quite without effect—though of course never quoted in the modified Codes, which continued to cite earlier decisions of more dubious character.

The authorities, indeed, were so fully aware of their legal helplessness that they permitted the most important of Narcotics Clinics, at Los Angeles, to operate for about three years unmolested. Nor would they have ventured to interfere even then, had not pressure been brought to bear by *the big business man in Los Angeles,* who is the head of the illicit drug ring in the western half of the United States. And this co-owner of the billion-dollar bankroll, who for three years had been only mildly irritated by the operation of the Clinic (after all, what is the loss of a mere quarter of a million dollars a year?), would in turn have refrained from interfering, had not a movement been developed to extend the Clinic method, together with a plan to have the California narcotics laws so modified as to permit the rationing of all addicts, regardless of "other pa-

thology" with an adequate dose of morphine, under medical supervision.

Such a law, if enacted, would take out of the market of the dope peddler, not merely seventy customers, as did the Los Angeles Clinic, but an estimated *four thousand* addicts who were ineligible for treatment at the Clinic because they had not the (paradoxical) good fortune to have acquired any other "incurable disease such as cancer, advanced tuberculosis and other diseases well recognized as coming within this class."

It became absolutely necessary, then, to nip this movement in the bud. The campaign to raise funds for publicity must be squelched, and the Los Angeles boss-racketeer now insisted that an effort should be made to stop the existing Clinic, the success of which afforded the main argument for the legislative movement.

Matters reached a climax in March, 1934, when the White Cross Society sent out a letter of appeal. There was a hurried gathering of the clans at Los Angeles. The Washington telephone wires, always freely requisitioned, were abnormally busy. A really ingenious plot was hatched. The Government's cleverest stool pigeon, ex-convict Charles Clark, was summoned from Chicago. The barest-faced scheme of attempted entrapment that even the Narcotics Bureau had ever attempted, was audaciously projected.

Meantime the United States Attorney was fed with assurances that this was the most important case in the entire history of the Narcotics Bureau—a statement the force of which can be appreciated only in the light of that Bureau's published record of 27,757 criminal cases, with aggregate prison sentence of 34,662 years and fines of $808,718 during the preceding five years.

False records were prepared and transmitted to Washington, to be subsequently returned (in form of "certified copies") for

the edification and education of a Federal Judge, whose official assistance was needed to complete the debacle through which the Clinic patients were sent back to the dope peddler, the White Cross menace temporarily squelched, and the equanimity of the highly regarded big business man of Los Angeles restored.

What the coadjutors were really accomplishing, had they but known it, was something far different from what they planned. They were undermining the industry that their efforts seemed calculated to bolster. The closing of the Los Angeles Clinic, which momentarily restored the dope-peddler market, forecast the overthrow of the entire illicit narcotics drug racket. The entrapment feat by which the Narcotics authorities distinguished themselves and won plaudits from Washington, was the beginning of the end of the era of the American Inquisition. At last the official bandits had overplayed their hand. The plot designed to conserve the California market was destined to culminate in the utter vanishment of the billion-dollar bankroll.

It is true that in speaking thus I am taking liberties with the future. But I speak with full knowledge of events of no uncertain augury. The import of my confident prediction will be better understood after certain other aspects of the story of public enemies in high places have been presented.

Meantime it may be noted that of ten officials (nine representing the Government and one the State) who were chiefly concerned in the frame-up and prosecution that eventuated in temporary closure of the Clinic, this may be reported: (a) four Federals (including the United States Attorney and two Assistants) have been ousted from office; (b) one Federal (Chief Narcotic Inspector for the District) has been demoted and transferred; while (c) Chris Hanson, who was Chief Federal Narcotic Agent at Los Angeles and (d) William B.

Byrne, Inspector for the State Board of Medical Examiners, are serving prison sentences.

Furthermore, (e) Vaugn De Spain, a local Federal narcotics agent who had an offensive share in the Clinic frame-up, was transferred to San Francisco, but in January, 1938, "resigned" in the midst of a graft investigation; finally on June 24th, 1938, he shot himself through the chest (where the heart would be located if he had had one) and died.

The two other Government officials are still in office. But the end is not yet.

FEDERAL AGENT'S RED HERRING

It has been noted that the Federal attack on the later Los Angeles Narcotics Clinic was apparently instigated by the imminence of a White Cross drive to arouse public interest in the establishment of similar benevolent institutions for the rescue of victims of drug addiction elsewhere. While the fate of the Clinic still hung in the balance (since the Federal authorities did not quite dare to order its closure directly), the White Cross drive for funds was inaugurated at Los Angeles.

There was immediate outcry from the Federal Narcotics authorities, with a certain person, who appeared to hold a nondescript commission as agent at large, in the van. Very soon this agent had the ear of the gentlemen of the press—as is usual in such cases. Soon the public, which might otherwise hardly have been apprised of the effort of the White Cross (newspapers being very chary of giving news in any wise painful to the dope racketeers) were informed of the iniquitous procedure. Here, they were assured, was indeed a mare's nest.

The agent's distress was pathetic. He declared with loud emphasis that "his Government Bureau" had directed him to fight the enemy tooth and nail—or words to that effect. And indeed he made it obvious that there was ample cause for his piteous outcry. He had discovered that in an earlier drive made by the same organization there had been scandalous peculation. Public confidence had been grossly abused. Not all the money collected from a confiding public for an alleged philanthropic work had been used in the manner intended. On the contrary, one of the subordinate collectors for the Society had used funds in a very dubious manner. The scandal was outrageous.

In a word, the agent avowed—with tears in his voice—the sum of upward of *seventy dollars* had not been properly accounted for. Seventy entire dollars, or something in that neighborhood, had been lured from the unsuspecting public, and used for personal purposes of a minor agent. Perhaps the White Cross officials knew nothing about it. But was it not their business to know? Could a representative of the United States Government stand idly by and see the public victimized?

Hardly. The agent did not stand idly, nor silently, by. His cries were really distressing. And the newspapers gave full publicity to the affecting spectacle of a Government officer in mental and moral agony. The danger was averted, and the next steps in the closure of the Clinic were effected without a word of newspaper publicity.

The press of a great city had not one word to say about the disruption, without warrant of law, of one of the most important benevolent institutions in the country—an institution sponsored by County Medical Association, Health Board, the Mayor of the city, and humanitarians in

general—although the purpose and the effect of such disruption was the throwing back into the hands of the dope peddler of seventy sick people whom the Clinic had rehabilitated.

The Federal agent's seventy-dollar red herring had accomplished its purpose. Dragged across the trail, it had served to lead the newshounds off the scent of the racketeers whose toll in California alone, according to the agent's own published estimate, was at least $20,000 a day, or upward of seven million dollars a year, without counting the added cost of "courts, jails, prisons, and economic loss" through criminality and vagabondage.

In other words, the Federal Narcotics agent's *seventy*-dollar red-herring adequately hid the scent of a *seven-million*-dollar racket.

Such a wee bit of a herring. But, in the nostrils of the dope peddler, of how delicious a fragrance.

Chapter XIV

Addicts Are Human Beings, not Criminals

THE perennial babble of the proponents of the Narcotics Code about the "ravages" of the "dope fiend" may best be met with statistical data from official records. Here are a few figures from records of the Department of Justice, as reproduced in the readily-accessible *World Almanac*. They will enable you to make your own appraisal of the menace spoken of in a certain famous address as the "ravages of the drug evil."

Among persons charged with crime and held for prosecution in the year 1933, in 703 cities, with aggregate population of 30,576,036, the persons held for violation of:

(1) Narcotic drug laws numbered	2,317, or	7.6	per 100,000 of population
(2) Homicide numbered	3,303, or	10.8	per 100,000 of population
(3) Liquor laws numbered	21,494, or	70.3	per 100,000 of population
(4) Driving while intoxicated numbered	23,399, or	76.5	per 100,000 of population
(5) Drunkenness numbered	455,615, or	1,490.1	per 100,000 of population
(6) Traffic and motor laws numbered	1,179,287, or	4,180.7	per 100,000 of population
(7) All other crimes numbered	597,489, or	2,064.5	per 100,000 of population
Total number	2,272,489, or	8,490.5	per 100,000 of population

So there you have revealed the fearsome galaxy of narcotics "ravagers" that have caused fanatics so much solicitude. In the cities having in the aggregate about one-fourth the population of the country, there were 2,317 of these ravagers intercepted, while the arrests of murderers, thieves, drunken drivers and all the rest of the law-breakers numbered only 2,270,172. (Figure the percentage for yourself.) For every million of the urban population, 76 ravagers against 84,829 minor offenders, from murderers and rapists to drunks and vagrants.

Something to think about with apprehension, surely.

If you live in a smaller city, to be sure, the menace is much

decreased. It is recorded that in cities of from 50,000 to 100,000 population, the narcotics arrests number only 4 per hundred thousand. In cities of the next smaller group, only at the rate of 3 per hundred thousand; and in cities under 10,000, only 1.6 per hundred thousand—or a *fraction of one ravager* per annum for each such city;—say one-sixth of a ravager for your town, if it has 10,000 inhabitants; or (to avoid mayhem) one entire ravager in six years.

It seems rather a pity to have caused the famous speaker above referred to so much anxiety over so relatively mild a menace, does it not? His urgent plea that we get busy and make new State laws along the lines of the Blackmail Code (though he didn't state it just that way) in the interests of the illicit drug traffic was doubtless music in the ears of the dope peddler; but perhaps hardly calls for special sessions of State legislatures.

Suppose we laugh with the Narcotics authorities and dope peddlers and let it go at that.

Meantime reference should be made to one other comedy-feature of the occasion on which the speech was made—an occasion that has been not inaptly termed the "Day of Dupes." I mean the widely heralded "round up" of narcotics offenders staged by the Federal authorities. Several hundred arrests were made—as they might be made any day of the year were there not ample reasons for not making them;—these reasons being, first, the fact that this would interfere too much with the regular business of the dope peddler; and, secondly, that there is no jail-room available to which one-tenth of the addicts could be committed if they were intercepted.

A third reason, of altogether minor significance is that the addicts are by and large a quiet, peaceable, inoffensive group of citizens, whom the police are glad to leave unmolested. Their "ravages" are known only in dupes-day vocabularies, as we have seen.

It may be objected, however, that the statistics above presented refer to arrests for violation of narcotics laws only; and that addicts may violate other laws. This is true enough; but it is also true that addicts as a class are very little prone to violate any laws if they can avoid it. Their peculations are committed almost exclusively to obtain money with which to meet the exactions of the dope peddler, and they consist of crimes of minor character. Fortunately for our present purpose, statistics are available that not only tell us what these peculations are, but also give data for estimating the relative importance of the crimes of all kinds committed by our unfortunate narcotics addicts.

The statistics in question are furnished me by Mr. Everett G. Hoffman, of Seattle, one of the founders of the White Cross Association on Drug Addictions, and among the foremost students of the subject. As official special investigator, he has in progress a census of the addicts of the State of Washington, which bids fair to be the most important contribution to the study of addiction in all its phases that has been made in this country at any time. I am fortunately able to cite certain data from yet unpublished statistical tables.

Seattle is a city of 360,000 inhabitants. It therefore falls in the category of cities having a much higher than average incidence of narcotic-law violators in the Government lists—the rate for all cities of over 250,000 inhabitants being 11 arrests per annum, as against the average of 7.6. Records are available of all arrests in Seattle for the past twenty-five years.

In Mr. Hoffman's statistics, arrests for drunkenness and for traffic violations are *not included*. This obviously reduces very markedly the total number of arrests. Yet even with these groups excluded (and drunkenness, surely, might justifiably be compared with narcotic addiction), the total arrests for violations of law by drug addicts, including addicted peddlers, is

only 1⅔ per cent of total arrests. (Peddlers and smugglers not addicted account for ⅚ of one per cent.)

The crimes for which addicts were arrested were almost never major crimes. The record shows that, of 1,933 narcotics first-offenders, 42 per cent were released with no penalty; 42 per cent were sent to jail for 30 to 60 days or fined $10 to $25; and only 16 per cent were sent to prison. Considering that mere possession of an interdicted drug counts as a felony under the Federal law, it will be evident that the prison sentence given 16 per cent of the offenders by no means implies, of necessity, the commitment of major crimes. In reality, the record here, as elsewhere, shows conclusively that major crimes are very seldom committed by drug addicts. Opiates tend to quell boisterous or anti-social emotions, and the addict's greatest dread is that he may be incarcerated and subjected to the cruel "cold turkey" method of drug-withdrawal.

In support of this view (which is matter of uniform observation with all observers who have come much in contact with the victims of drug addiction disease), the Seattle statistics show that recidivism is only about one-fourth as prevalent among addict offenders as among other types of criminals. Specifically, the average number of arrests in 25 years of all criminals is 12.5 times per individual; whereas the average number of arrests for all persons concerned with drugs is only 3.06 times. Does that mean anything?

This will be matter for surprise to many students who have seen lists in which addicts are recorded as being arrested fifteen or twenty times. Such perpetual recidivism is characteristic of certain individuals, who know that the jail to which they will be sent has a humane physician. But the very low average number of arrests is eloquent testimony to the solicitude with which addicts in general endeavor to avoid conflict with the law.

Incidentally, since most of them must buy their drugs illegally every few days, and since vast numbers of them are known personally to the police, and could be apprehended at will, the low average of re-arrests is testimony also to the sensible attitude of the police—whether their tolerance be motivated by consideration for the innocent addict or for the peddler who supplies his needs.

Since I have had occasion to say so much that is disparaging, let me go on record here as believing, from personal observation, that a very large percentage of policemen and narcotics officers of the municipal and State forces are genuinely sympathetic with the non-criminal addict, and fully cognizant of the injustice done him by the Blackmail Code and such local and State laws and regulations as have been based on that iniquitous document.

That consideration, though introduced here only by the way, is not altogether without pertinence to our theme of the moment. That tens of thousands of addicts are known to the police who are never molested, is in itself a testimonial to the innocuous character of the average addict. The Day-of-Dupes round-up of several hundred addicts could be duplicated any day of the year, of course. Upward of half a million of the "ravagers" are at large, quite undisturbed. And only at long intervals and for a special purpose would the dope merchants (or their big Chiefs) tolerate interference with the regular routine of their business.

The spectacle of December 10, 1934, will long remain without challenge as *The* Day of Dupes.

On the other hand, the Week of Dupes, which has become an annual festival, in February, is a function meriting the full approval of the high potentates of the dope ring and, of course, all lesser members of the coterie. As elsewhere noted, the objective of the propaganda-week spectacle is the development

of public interest in the idea of a "Uniform State Law" governing the distribution of narcotics.

To the gullible public this is being sold as a measure calculated to combat the "dope evil"—the same ravaging menace that was to the fore in the Day of Dupes. The actual object is to give full and final protection to the dope peddler. This is accomplished in the States that have taken the bait (fortunately few in number) by the enactment of laws forbidding the treatment of ambulatory addicts—which is tantamount, as we know, to an order compelling ninety-nine addicts in a hundred to patronize the dope peddler exclusively.

It is pathetically laughable to listen to the meaningless drivel about the "many-headed Beast," drug addiction, emitted over the radio by the Presidents of Women's Federations and suchlike babes in the wood, who mouth the phrases supplied them by the Narcotics authorities, and who would be horrified to know that whatever influence their uncomprehending recitals may have, is exerted directly and solely in the interests of the dope peddler and his official coadjutors.

An amusing spectacle, this Carnival of Dupes, is it not? From the standpoint of the holders of the billion-dollar bankroll, a delightful spectacle.

And the rest of us might as well learn to like it.

A RECENT LETTER

Los Angeles, Feb. 26, 1937.

To Mr. Byron Hanna, President, Los Angeles Chamber of Commerce,
Dr. Geo. Parrish, Health Officer, Los Angeles,
Hon. Frank Shaw, Mayor of Los Angeles,
Dr. John P. Nutall, Pres. L. A. Co. Med. Assn.,
The Editor of the Los Angeles Times,
The Editor of the Los Angeles Examiner,
The Editor of the Los Angeles Herald,
The Editor of the Los Angeles Daily News,
The President of the Ebell Club,

The President of the Friday Morning Club.
Ladies and Gentlemen:

This is Narcotic week.

I believe that the public should know the real truth of this narcotic situation.

I had double pneumonia that resulted in my becoming afflicted with pulmonary tuberculosis in 1925 and I moved to Arizona, where I was attended by a physician who prescribed narcotics to relieve the hemorrhages that I was having from my lungs.

I remained in Arizona three years and then returned to Los Angeles and at the request of Mr. Seaman, Trust Officer of the California Bank, was examined by Dr. Roy Thomas, who reported to Mr. Seaman that I had pulmonary tuberculosis.

I then went to Butte, Montana, where I was examined by a Dr. Gregg, who also stated that I had pulmonary tuberculosis.

In 1931 I was admitted to Spadra where an effort was made to take me off of narcotics. I was detained there for three weeks and was then told by the Superintendent Dr. Joyce that I was too sick a patient to be taken off of the drug and never to attempt to have narcotics withdrawn.

I then went to the Stilwell Rest Sanitarium at Banning, where I remained eighteen months under the care of Dr. Gil.

On my return to Los Angeles I re-visited Dr. Joyce at Spadra, who sent me to Dr. Wm. Duffield and Dr. Steele at the Los Angeles General Hospital and was placed on the Los Angeles Co. Pathologic Narcotic Clinic.

When that Clinic was closed I went to the Clinic that was organized by the Health Department of the City of Los Angeles and was sent by Dr. Anthony to the Hollywood Hospital for an X-ray and laboratory examination. I was pronounced as suffering from active tuberculosis. Dr. Anthony then sent me to Dr. Carl Howson, a tubercular specialist who made the same diagnosis. I was treated by Dr. Anthony who prescribed for my tuberculosis and gave me the narcotics that I required to prevent hemorrhages from my lungs.

Today I am without narcotics and am having hemorrhages.

Physicians will not prescribe narcotics for me as they fear arrest from State or Federal Narcotic officers.

I have been refused treatment at the Spadra State Hospital. I have been refused admittance to the Los Angeles General Hospital because I am addicted to the use of narcotics. I am not financially able to go to a private institution. Unless I receive narcotics I will die. Yours in distress.

J. Wesley Roberts

BOOK III

The Blackmail Code and the Doctors

CHAPTER XV

25,000 Innocent Physicians Branded As Felons

IN THE course of the past twenty years, upward of 25,000 registered physicians have been arraigned for criminal violation of one Federal law. According to the statute, the penalty for such violation "*shall* be [not *may* be] a fine of not more than $2,000 or imprisonment for not more than five years, or both."

About 20,000 of the physicians thus charged were allowed to cancel their "liability," by payment of what is facetiously termed a "commensurate sum in compromise" or by merely acknowledging their guilt and, in effect, labeling themselves felons. The others were haled to court, and prosecuted.

In about 95 per cent of these cases, the trial resulted in the doctor's conviction of the felony charged in the indictment.

About 2,000 of the physicians thus convicted were penalized only with fines, ranging from one hundred to ten thousand dollars.

The remaining 3,000 physicians were sentenced to Federal prisons, to serve terms of from one to eleven years.

With rare exceptions indeed, these physicians regarded themselves as unjustly convicted; and such of them as could possibly finance an appeal made such appeal to the Circuit Court. For the most part these appeals did not succeed, and the vast majority of the defendants could go no further. Out of the five thousand, only 25 were able to carry an appeal to the

Supreme Court of the United States, on petition for writ of certiorari.

In all but six cases, this writ was denied. These six cases, and six only (out of five thousand) ultimately gained a hearing before the Supreme Court. In two of these cases, the verdict of the lower courts was reversed. In three cases the verdict was affirmed unreservedly. In the remaining case, the verdict was affirmed, with the comment that the trial judge had in one instance mis-stated the law, but that the defense lawyer did not at the time take exception to the false statement, and therefore "is not now in a position to object to it." (Boyd case, 1926.)

That is to say, it seemed equitable to the high tribunal that a probably innocent physician should go to prison, rather than that a lawyer's technical error should be condoned.

May a layman be permitted to suggest that this seems a slightly myopic conception of Justice? However, one miscarriage of justice is a small matter, against the background of 25,000 cases in which physicians equally innocent of any crime have been victimized.

Let me explicitly affirm, what this implies, that the 25,000 physicians in question, with rare exceptions, were and are innocent of the "crimes" with which they were charged and for which they suffered. In support of this view, some illustrations of juridical methods are presented in subsequent chapters.

Chapter XVI

Evolution of the Blackmail Code

THE so-called narcotic drugs—in popular parlance "dope" —to which our "anti-narcotics" laws refer are opium, coca leaves, and their derivatives. The present discussion is concerned almost exclusively with opium and its products and derivatives; our chief concern being with the important alkaloids morphine and heroin. These are the chief habit-forming "narcotics" of the illicit drug traffic. They are also the most important pain-quelling drugs known to medicine.

Morphine is used medicinally and by the drug addict, not in pure form as an "anhydrous" alkaloid, but combined to form a sulphate or a chloride of greater solubility. Heroin is made from morphine with the aid of acetic acid. Our import laws forbid the import of these or any other derivatives of opium. Only the crude product, opium itself, may be imported; and since 1924 no opium may be imported for the manufacture of heroin. That drug is therefore practically contraband—an unfortunate tribute to fanaticism, since heroin has great utility in many cases, as in some cases of cancer, where morphine nauseates the patient while heroin does not. Other opiates, including codeine (usually a derivative of morphine, but sometimes derived directly from opium), are used extensively; but morphine sulphate is the staple of the physician, and either that or morphine chloride is the drug most used by the addict.

In recent years, heroin figures largely in the illicit traffic.

There are many other derivative drugs, including recently developed laboratory products not yet in general use. But it is

convenient to speak of the habit-forming opiates, when statistics are in question, in terms of morphine, the essential alkaloid. In general discussions, and even in the technical literature, it is customary to say "morphine" when the drug actually referred to is morphine sulphate or morphine chloride. Anhydrous morphine, as such, figures only in manufacturing statistics, and is seldom or never placed on the general market, licit or illicit.

The Federal law designed to control the distribution of habit-forming "narcotic drugs" is the so-called Harrison Act, of December 17, 1914, slightly amended but in nowise significantly modified, four years later. The essential purpose of this law as amended, was to place a special tax on all products of opium or coca leaves, and to interdict absolutely the distribution of such "narcotic" drugs to the ultimate consumer except on authorization of a physician, dentist, or veterinary surgeon.

The text of this Harrison Special Tax law, as issued by the Treasury Department, with the stamp of the Government Printing Office, covers twelve large pages, comprising perhaps five thousand words. Yet there is only a single paragraph—printed, indeed, as a single sentence—that refers directly and affirmatively to the professional activities of the professional men who are the sole authorized distributors (directly or by prescription) of the narcotic drugs in question. Here is the sentence:

"Nothing contained in this section shall apply—(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon registered under this Act in the course of his professional practice only: *Provided,* That such physician, dentist, or veterinarian shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years

from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act."

That is the entire substance of the law, so far as it applies to physicians.

A complementary provision permits retail dealers (druggists) to sell, dispense, or distribute the drugs "in pursuance of a prescription issued by a physician, dentist, or veterinary surgeon registered under this Act." Another supplementary provision permits "any person to have in his possession any of the aforesaid drugs which have been obtained from a registered dealer in pursuance of a prescription, written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under this Act" (the bottle or container being fully labelled). For good measure it is added that the clause forbidding the distribution of narcotics except in the original stamped package or from the original stamped package does not apply—

"to the dispensing, or administration, or giving away of any of the aforesaid drugs to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and where said drugs are dispensed or distributed to the patient for legitimate medical purposes, and the record kept as required by this Act of the drugs so dispensed, administered, or given away."

These supplementary passages give us not merely the substance, but the entire text of every reference to physicians (except as to the formal matter of registration) in the entire Harrison Act. The full significance of the references is contained in three allied clauses: (1) *"a prescription written for legitimate medical uses"*; (2) *". . . drugs dispensed or administered to the patient for legitimate medical purposes . . ."*; and (3) *". . . in the course of his professional practice only."*

There is no other reference, direct or indirect, in the Harrison Act to the uses of narcotic drugs. Nor is there the remotest

suggestion of definition or interpretation of the phrases "legitimate medical uses" or "professional practice" or the word "patient." We may well suppose that these familiar terms were assumed to be taken in their ordinary meaning. The law-makers were not writing a dictionary.

The dictionary was supplied presently by the Commissioner of Internal Revenue, whose duty it was to enforce this tax law. Under the heading "Definitions" he issued a series of 112 "Articles" purporting to explain and interpret the meaning of various phases of the Law. Most of these articles were more or less conventional and harmless. But there was one that was loaded with dynamite. This is Article 85, the first paragraph of which reads:

> *"Purpose of Issue.*—A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. An order purporting to be a prescription issued *to an addict or habitual user of narcotics,* not in the course of professional treatment but *for the purpose of providing the user with narcotics sufficient to keep him comfortable* by maintaining his customary use, is not a prescription within the meaning and intent of the Act; and the person filling and receiving drugs under such an order, as well as the person issuing it, may be regarded as guilty of violation of the law."

I have italicised the phrases which, in effect, define the terms "legitimate medical purposes" and "professional practice" and "patient" as understood by the Commissioner of Internal Revenue, and subsequently confirmed successively by a Deputy Commissioner in charge of the Narcotics Division of the Prohibition Unit; the Commissioner of Prohibition appointed in 1928; and the Commissioner of Narcotics, appointed in 1930.

The import of the interpretation is that a drug addict is not a patient to be treated by the physician in accordance with his own judgment, and that to make such a person comfortable

(supposedly a prime function of medicine) is not a "legitimate medical use" of narcotic drugs. This interpretation was clinched in a series of "Regulations" put out by the Treasury Department, which went a step farther by expressly discountenancing the attempt to treat drug addicts for their addiction unless they were under forcible confinement—though it was known that addicts were a multitude and that places where they could be confined for treatment were practically nonexistent.

This set of "Regulations," supplemented by rulings as to the manner in which narcotics agents are authorized to "compromise" alleged violations of the Law (Article 108), I have characterized as the "Blackmail Code." I regard it as one of the most extraordinary documents in all history.

Chapter XVII

Physician Versus Dope Peddler

WHEN the official coadjutors of the dope peddler bring their indictment against a physician for alleged violation of the Harrison Law, the conventional charge is that the physician wrote a prescription for morphine sulphate. Or rather (usually) five prescriptions, each for morphine. The further charge is made, as a matter of form, that the physician, in writing the prescriptions, conspired (in the criminal sense of the word) either with another physician who examined the patient in consultation, with the patient himself, or with the druggist who filled the prescription—so that six "counts" may appear in the indictment.

Each "count" represents a felony that may be punishable with a two-thousand-dollar fine and five years' imprisonment.

The strategic value of this method is attested by the fact that it seldom fails to bring conviction. In 1934, for example, there were 190 such cases tried in Federal courts, with 182 convictions. There were 22 other Federal cases tried in State courts or jointly, bringing the total to 212. And just 9 cases escaped conviction.

The prison sentences aggregate 435 years—a lot of "time" to be served by physicians who had committed no infraction of any law whatsoever.

The aggregate fine was $26,386.75—a lot of money to take from the pockets of physicians very few of whom ever manage to collect enough money in any year to earn them the privilege of paying an income tax.

But I am digressing. What I started out to say was that the crime committed by the physician, as charged in the indictment, is the prescribing of morphine sulphate. And I meant to point out that the indictment is pretty sure to specify that the morphine sulphate was actually prescribed in the form in which it is commonly employed by persons who are addicted to the habitual use of that deadly drug.

That obviously clinches the matter. The physician must have known that this patient was an addict, or he wouldn't have prescribed morphine in that form, would he? The argument goes home to the grand juror, and later it will go home to the judge and petit jury. It is convincing.

How should the poor laymen of jury or bench know that there is no other form in which morphine, as such, is prescribed for any purpose? How should he know that the morphine sulphate in question is the identical drug that was prescribed for him when he had that kidney stone or that broken leg or when he was smashed up in that automobile accident or to prepare him for the operation and quell the after pains when he had his appendix out?

How should he know, in short, that morphine sulphate—the drug prescribed for this patient—is the most important of all medicaments; the one medicine that will quell major pain; the one drug that every physician carries in his hypodermic case; the one weapon with which the physician (every physician in the civilized world) meets emergencies, and without which he would stand helpless in the presence of agonized humanity?

How should he know that the need of humanity for this pain-conquering drug—a veritable gift of the gods, derived from a single source, the poppy plant—is so great that upward of *six tons* of morphine (or its equivalent) are used in legitimate medicine in the United States every year—six *tons* of a

medicament the average dose of which is *one-eighth of a grain?* A ton comprises 14,000,000 grains. Eight times that gives 112,000,000 doses to the ton. Six tons bring the total to 672,000,000 doses.

And that appears to supply about 5 doses for each and every individual—man, woman, or child—in the country. Or, say, 20 doses for every family.

It begins to look as if we were all dope fiends, doesn't it? *All* of us appear to be habitues of this poisonous dope. And it *is* poisonous, you understand. If all the opiates that we all consume each year were to be taken by us in one day, we would all go soundly to sleep, and about the only ones of us that would ever waken again would be the little group of addicts who had been getting more than their share before, and so had become somewhat immunized against large doses. We other addicts, who have been taking our morphine only now and again, have not gained immunity, and so would all be dead.

Are we to understand, then, that the doctors handle such a deadly poison by the ton? Quite so. That is the business of doctors. Most potent remedies are poisons, if not administered in the right dosage and to the right persons. Morphine isn't really a very poisonous drug, in the *relative* scale. The average dose, as mentioned, is one-eighth of a grain. But a quarter-grain dose is not unusual. And if you happen to be called to help a man who is agonized with a kidney-stone or gall-stone, you had better make the dose half a grain, if you want to get quick results, and earn the gratitude of the patient.

But suppose you were to give anybody a half-grain dose of strychnine, or of digitalin, or hyoscine, or of epinephrin? Where would the patient be? Nobody knows. But he would not be alive.

With a little practice, you could learn to take ten or fifteen grains of morphine a day, and thrive on it. That much nicotine

—dissolved from the cigars in your humidor—would kill a hundred men instantly, even though they were hardened smokers. The nicotine in the cigar you are smoking would kill you in the blink of an eye, if it all got into your system.

But why, then, all the ballyhoo? Why this chatter about "poisonous drugs" and "dope"? If morphine, the greatest blessing ever vouchsafed mankind as a medicine, is the thing we call "dope"; and if it isn't *very* poisonous, but *is* absolutely indispensable; if we all take it from time to time, and take it by the ton in the aggregate, and can't get along without it—why, in the name of wonder, do we speak of it with bated breath, and call our neighbor a "dope fiend" because his infirmity makes it necessary to take a little more of the drug than we take, and look on him as a physical pervert and moral leper? Why, indeed?

If you chance to have the misfortune to be smashed up in your car this afternoon, your need of morphine will be as great as that of any addict in the world; and you will be for the time being a "dope fiend," and your morals will be perverted just as much as those of any other user of morphine are perverted by the drug—that is to say, not at all.

All of which leaves you wondering why the doctor was arrested for prescribing this indispensable medicine for a patient who is conceded to have needed it. And wondering still more why he was prosecuted and convicted and fined or imprisoned.

Surely, you say, the doctor did *something* quite different from what the indictment alleges. Surely his crime did not consist merely in prescribing medicine—the most indispensable of medicines, which everybody takes—for a sick patient. What else did he do? What was his real crime?

The answer is that he did nothing else, and that he committed no crime.

And the rest of the story is that the United States attorney

who wheedled the grand jury into bringing the absurd indictment was perfectly aware that no law had been violated. He was perfectly aware that in bringing the indictment he was acting the part of a time-serving politician, under orders from Washington. He knew that the indictment was a perfect example of hypocrisy. He knew that every statement of fact in the indictment could be accepted as fact, without the slightest reflection on the accused physician. He was perfectly aware that no Federal law places any restriction on the physician in the practice of his profession, nor could any Federal law constitutionally do so.

The statement that the morphine prescribed was in the form used by addicts (when there is no other form) is a typical illustration of the Pharisaism of the entire document. This sophistry and the others serve their purpose, simply because of the profound ignorance of the members of the grand jury of the entire subject involved.

More than likely some of the grand jurors have a modicum of the same drug—the deadly morphine—in their veins at the very moment when they find a true bill.

As average citizens, they are sure to have had their average share of the drug—let us say, a hundred doses up to the time when they sit there in the jury room and find a "true bill" against an innocent physician for prescribing this medicine.

Two thousand doses for the jury as a whole have been taken, first and last, of this dread dope, morphine.

And they gravely charge a physician with five *felonies* (with possible penalties of heavy fines and long imprisonment) because he wrote five prescriptions, for a patient who needed that medicine as vitally as each member of that jury needed the same medicine on the various occasions when he received it, and was blessed with its pain-quelling benefactions, at the hands of another physician.

Odd, isn't it, when you come to analyze the matter a little? What can be the explanation?

I can summarize the purport of the answer to that question in a few sentences. The motivation of the entire procedure is simply this:

Whenever a physician prescribes morphine for a patient who requires the drug regularly, he enables that patient to get the medicine he needs at a cost of a few cents a grain, at a drug store —legitimately and legally. But the same patient, if the physician had not prescribed for him, must have gone for the drug to a dope peddler, who would have charged him at the rate of one dollar a grain, or ten dollars for the quantity to meet his needs of one day.

Otherwise stated, the act of the physician interfered with the business of the dope peddler. The five prescriptions named in the indictment called, in the aggregate, for, say, five hundred grains of morphine—each prescription providing for the patient's needs for an entire week. The physician who wrote the prescriptions (and who is now indicted for writing them) probably received nothing. The druggist got $20 for filling the five prescriptions. The total cost to the patient, therefore, was twenty dollars.

But if the patient had been obliged to go to the dope peddler, instead of to the druggist, the cost for the same medicine would have been, not a mere twenty dollars, but upward to *five hundred dollars.* And if the doctor had not written the prescription, the patient would have had no alternative, but to patronize the peddler. As always, "prohibition"—but this time illegal—leads to bootlegging.

So those five prescriptions, which brought the doctor nothing, and gave the druggist a few cents' profit, effectively took upward of *five hundred dollars out of the pocket of the dope peddler.*

And the dope peddler, having friends at court, will not tolerate such robbery. Hence the arrest, the Pharisaical indictment, the hypocritical trial, the grotesque verdict, and the illegal judgment.

There, in a nutshell, you have the entire story. Solely in the interests of the dope peddler and the smuggler who supplies him, 1,293 physicians were "reported for violation of the Federal narcotics laws during the year 1934." (I quote the "Government's" own official record.) And that was only an average record. That is the sort of championship of the dope industry that has been carried out ever since the industry was established by the issue of illegal Codes by the Treasury Department in 1921.

During that fourteen-year period, then, upward of twenty thousand physicians have been sacrificed by the representatives of the Federal Government to the dope peddler or illicit drug industry.

Not one in a hundred of these physicians—if, indeed, one in a thousand—had violated the letter or the spirit of any law. Not one in a hundred had infringed in the slightest degree any principle of medical ethics. For proof of that, look to the same Government records, which tell that the State Licensing Boards decline to revoke the licenses of the vast majority of physicians reported to them by the Federal narcotics authorities (1,293 physicians reported, with 28 revoked licenses is a recent example).

Yet the Licensing Boards are zealous for the upholding of the highest standards of medical practice and ethical conduct.

It may be presumed that the Medical Boards are not bought by the dope peddlers. Does this seem to imply that the Narcotics authorities *are* bought?

State the facts to the Kindergarten class, and see if the kiddies can find the answer.

A TYPICAL INDICTMENT

Of the two thousand physicians and pharmacists who are cited for "criminal violation of the Harrison Act" each year, about two hundred fail to purchase immunity, and are haled to court. The Federal indictment charging them with felony is a stereotyped document, used in thousands of cases in the past sixteen years—and used most effectively.

This document, issued by the United States Attorney, under aegis of the grand jury, charges that the physician effected an illegal sale of morphine sulphate, by issuing a prescription on a given date for a named person, said prescription being issued "not in good faith, and not in the course of professional practice only." For good measure, it is added that the person prescribed for had no disease for which morphine is a remedy, and that the medicine was not prescribed for treatment of any disease; and that, moreover, the morphine ordered was in the form ordinarily used by persons addicted to its habitual use.

This, according to the indictment, constituted a crime contrary to the statute and against the peace and dignity of the United States.

The proper answer to this would be that: (a) the physician *did* prescribe in good faith, because he tried to benefit the patient, and did benefit him by prescribing the only medicine that could alleviate his condition; that (b) the prescription was issued in the regular course of professional practice, since the physician sat in his office and dealt with this patient as he dealt with patients in general; that (c) drug addiction itself has been recognized by the Supreme Court as a disease, and the addict as a proper subject for medical treatment; and that (d) the form of morphine administered is the only form in which the drug is generally used in medical practice—upward of three tons of it being legitimately prescribed by the physicians of this country every year, in addition to many tons of codeine and other opiates.

Unfortunately, the defense attorney usually does not know these simple answers. So he lets himself be led off on red-herring trails, disputing about irrelevant subjects such as the diagnosis of various maladies; the dosage of morphine for ordinary patients, and the like. And the jury, utterly mystified as to what it is all about, and supposing that in any event a mere misdemeanor is charged (the lawyer dare not enlighten them as to this, and the judge will not), decides presently to compromise—and their verdict sends the doctor to the penitentiary, though they had no such intent.

That is the route which upward of five thousand physicians have traveled during the past twenty years in America.

Chapter XVIII

The Blackmail Formula

IN THE Government Report on the Traffic in Opium and Other Dangerous Drugs for 1934, some interesting details are given of the methods by which the Narcotics Bureau keeps track of the narcotic medicines distributed by dealers licensed under the Harrison Law, of which, as is well known, there are five classes, ranging from importers and manufacturers to druggists and physicians. In quoting a very extraordinary passage on page 52, I break the matter into numbered paragraphs, for convenience of later reference:

(1) "In any case where the purchases made by any one registered in any of these classes appear to be excessive, or otherwise open to suspicion, an investigation is instituted to determine whether the purchases are incident to improper practices, in which case prosecution may be had or other penalties imposed.

(2) "During the year, on the basis of this information, 177 investigations of retail druggists and 451 investigations of medical practitioners were conducted.

(3) "An appreciable number of these investigations disclosed evidence of improper sale or dispensing of narcotics, due either to wilful disregard of the law, carelessness, or misunderstanding of the application of the law.

(4) "Where the evidence of improper sale or dispensing was of such nature as to indicate wilful disregard of the law, the offender was prosecuted; but where the offense was of a minor character and attributable to carelessness or misunderstanding of the application of the law, the case was closed by the *payment by the accused of a commensurate sum of money to the United States in compromise of the liability incurred,* or by a formal admonition to the accused without such payment, depending, of course, upon the estimated degree of his culpability.

(5) "The aforementioned investigations were in addition to those

initiated by field enforcement officers based on information collected from sources other than the monthly returns.

(6) "A total of 579 druggists and 1,293 medical practitioners were reported for violation of the Federal narcotic law during the year 1934."

COMMENT: The Government makes no further verbal elucidation of the statistics presented, but elsewhere in the Report are two tables of figures, from which we learn that: (a) of the 1,872 druggists and physicians referred to in paragraph (6), 212 were tried in courts, with 203 convictions, netting an aggregate prison sentence of 439 years and fine of $26,386.75; and that (b) several hundred druggists and physicians (details later) were reported to various State licensing boards, for revocation of licenses or other punishment. As to the latter point, the cases of 599 physicians and 72 druggists were "pending" before the license boards at the close of the year 1934. The licenses of 32 physicians and 5 druggists were revoked during the year.

Since 1,872 physicians and druggists were "reported for criminal violation" (paragraph 6), and only 212 were prosecuted, it would appear that 1,660 of these cases were "compromised" under conditions stated in paragraph 4. A table on page 10 tells us that $18,172.00 was the "total amount accepted in cases compromised," but it is not quite clear whether other cases than those of physicians and druggists are included in this summary. The total convictions for all classes of violators were 2,674, with aggregate prison sentence of 5,084 years. For the five-year period 1930-34, the convictions numbered 15,154, the aggregate prison sentence was 32,262 years, and the total fines $808,662.00.

As the number of physicians "reported for violation of the Federal narcotic laws" in 1934 was 1,293, and as only 212 physicians and druggists were prosecuted under Federal jurisdiction, it follows that more than 1,000 doctors were represented

in the group for whom "the case was closed by the payment by the accused of a commensurate sum of money to the United States in compromise of the liability incurred, or by a formal admonition to the accused without such payment, depending, of course, upon the estimated degree of his culpability." We are not told what share paid and how many were only "admonished," but we do learn that 218 cases were officially compromised, with payment of $18,172, which averages about eighty-three dollars. In the five-year period 1930-34, there were 1,721 cases compromised, with average payment of about ninety-three dollars, totalling $161,372.

A question at once arises as to who estimates the "degree of culpability" of the physician who has been "reported for criminal violation of the Federal law." The Harrison law itself says nothing about "degrees of culpability." It makes no distinction between the illegal bartering of a grain of morphine, or an ounce, or a pound. The Federal courts make no distinction.

On what ground can a Narcotics agent be assumed competent to decide the "degree of culpability" of a physician whose action has led to his being "reported for criminal violation" of the law? If we reflect that the person who does the deciding is in all probability the same person who did the "reporting," the situation is not clarified. If the conduct of the physician justified a report for criminal violation of law, then it should be the function of grand jury and courts to decide whether or not he is guilty of the crime charged.

And if any individual comes to the accused physician and offers to let him off from prosecution if he will pay "a sum of money commensurate to the liability incurred"—that offer is the kind of thing which, under any other circumstances, would be given the simple and significant name of *Blackmail.* I know no other name by which to characterize it. Just what would you call it?

That is why I speak of the statement quoted in paragraph 4 above, as the Blackmail formula. Even though the "commensurate sum" exacted be paid to the United States, none the less it is money exacted by threat and paid by the "accused" in the hope of avoiding the worse alternative of prosecution.

Chapter XIX

A Terrorized Profession

HOW is it to be proved that the $18,172.00 tribute, said to have been exacted in 1934 and turned over to the Government, represents more than a fraction of the sums exacted and *not* turned over to the Government? It requires no keen imagination to justify the suspicion that the blood-money exacted is not all officially accounted for.

However, for the moment, let us assume that the blackmailing is all done under aegis of the "law" and that only about a thousand physicians each year are thus victimized.

Let us assume that every narcotics agent is absolutely honest, and that each one uses his best judgment in deciding which physicians to send to jail and which to mulct of money out of court.

Still there arises this salient question:

How does it happen that upward of a thousand physicians each year submit to blackmail? Upward of fifteen thousand physicians, apparently, have so submitted in the period since the Blackmail Code became operative—more than ten per cent of the total number of physicians registered as prescribers of narcotics in any year.

There cannot have been many of these physicians to whom even $93, the apparent average, is a negligible sum.

We cannot suppose that there were many who *liked* to be blackmailed.

Why, then, have they submitted, and for the most part submitted in silence?

You may consider, if you like, that this entire book is an answer to that question. I could not give an adequate answer

in fewer words. The whole story of what I speak of sometimes as the American Inquisition and again as the Reign of Terror is involved. I shall here attempt, nevertheless, to give a nutshell presentation, which will at least serve as a prelude for the fuller treatment of matters presented in later chapters, or as recapitulation and summary of other aspects of the problem previously depicted.

In a word, the physician accused by a narcotics agent submits to be blackmailed partly through ignorance and partly through fear. He is ignorant of the real substance and meaning of the Harrison Law, of which the accuser prates. He knows something of the Blackmail Code, but supposes it to be a part of the Harrison Law. He believes that he has conformed to every tenet of the law, but is shaken by the agent's reiterated assertion that some of his prescriptions (which, of course, are in hand, the originals with the druggist, the duplicates in his office) are not "prescriptions within the meaning of the Law." He blanches before a threat like this (I quote verbatim a recent example):

"If you give me any of your lip, we will get you just the way we got Dr. Huntington."

Then enters Fear. For the "accused" physician knows that the Doctor in question is one who fought back when similarly accused, knowing himself to be absolutely innocent of any wrong doing; and who, for his temerity, was framed and brought into court and confounded by perjured witnesses and —mark this, please—*convicted of writing a prescription which, by stipulation of the prosecution, he had never seen or known to exist until he saw it in the court room.*

Perhaps the "accused" physician has been in a Federal court, as a spectator or to testify as an expert, and has there observed the play of wits—and witlessness—that does service for the "orderly process of law."

Perhaps he has seen an ex-convict syphilitic stool pigeon on the witness stand, and heard his word accepted in contradiction of the word of an honorable physician. For that has happened again and again.

Perhaps he has seen a judge, turned advocate, badgering and browbeating a medical witness, warning him against any reference to the Harrison Law as physicians understand it; putting answers into his mouth; revealing at once the Court's incapacity to grasp medical subjects and the depth of his prejudice based on such ignorance; showing his bias at every stage of the trial.

He may have heard such a judge, in his instructions to the jury, distort the meaning of the Harrison Law (in terms of the Blackmail Code) and so unfairly select for quotation detached fragments of medical testimony as to direct, in effect, the conviction of a physician whose entire innocence was too patent for sane question.

Perhaps he had learned that the simplest move of a physician —the mere examination of a patient by appointment—could be made to take on a sinister aspect.

Perhaps he had seen that, even when every act of the physician was admitted to be legal in form, the "good faith" of the act might be challenged, though no motive for bad faith was so much as suggested.

Perhaps he had seen a case where a physician was convicted of felony for prescribing ten grains of morphine daily for an addict patient (a usual and average dose, and in this case the minimum to keep the patient anywhere near normality)—convicted because the rules of evidence were so cleverly invoked by the prosecution, and so unfairly interpreted by the Court, as to leave in the minds of the jury the impression that the permissible dose of morphine is one-eighth of a grain: suggesting gross indiscretion or worse on the part of a physician who in

reality had prescribed wisely and well and in full accord with both law and medical ethics.

Perhaps, I say, the "accused" physician had seen such things as these. Possibly he had seen or heard of the Government reports showing that about 96 per cent of the physicians brought to trial under the Harrison Act have been convicted. And he knew that what these physicians were charged with doing was precisely what he now found himself "accused" of doing—writing prescriptions for morphine sulphate for patients who, the Government would claim, were not entitled to receive the medicament.

The prescriptions had been written, of course. There was no dispute about that.

The patients needed the medicine. There was no dispute about that, either.

But the Government claimed that these patients are outside the pale of humane treatment, and that to attempt to aid them is a felony under the Harrison Law. Of course, the doctor doesn't know the law.

The narcotics agent is speaking: "You claim, Doctor, that the patient who you wrote this prescription for has syphilis of the central nervous system. If so, you were possibly entitled to write the prescription. But can you prove that the patient had this malady?"

"Of course I can prove it. He had a lot of symptoms—you see them recorded in this record. He admitted having had syphilis, for that matter, and I gave him salvarsan treatment, along with bismuth and protein treatment, and his symptoms cleared up and he gained in every way."

"So *you* say, Doctor. But if the symptoms cleared up, they can no longer be demonstrated, so we can find a doctor who will examine the patient and fail to find that he has syphilis. Meantime I have seen the patient [who, in fact, has turned stool

pigeon, under duress], and he will testify that he never had syphilis, nor claimed to have it, and that you gave him no treatment at all."

"What? He's a damned liar. He took treatment week after week, and here is the record."

"So *you* say, Doctor. And of course I believe you. But after all it is one man's word against another. Are you sure which man the jury will believe? Isn't it better to play safe? You have me near enough convinced so that I feel authorized to compromise the case, as the Government permits us to do. Suppose we assume that you only acted carelessly or through misunderstanding of the law. A 'commensurate sum' to compromise that would be, say, about a hundred dollars . . ."

At that point something happens. The chances (according to the records) are about five out of six that the physician sinks back into his chair, and begins to figure how he can raise the hundred dollars quite probably not having that much money in the bank.

The blackmail formula has worked. The agent has earned his salary and his report will gain him approval in high places.

About one doctor in six, however, is of different fiber. This sixth man is no more innocent than the others, no one of them having violated any law, nor even infringed the tenets of the narcotics Code, properly interpreted. This man, like the others, has written prescriptions that are in hand, and are being challenged.

But, unlike the other five, he is a man of the temperament that will not submit to blackmail.

Call his response pride or obstinancy, or courage, or what you will. Perhaps mere anger accounts for what he does. At all events, his response to the blackmail formula is not printable. The agent who propounds the formula is lucky if he escapes from the office without a battered face.

THE BILLION-DOLLAR HIGHWAY

The direct annual turnover of the Narcotic Drug Racket (which is kept alive solely by the illegal prosecution of Physicians) would pave a highway seven feet wide from New York to Los Angeles with dollar bills.

But of course the end is not yet. This was attempted blackmail, to be sure. But legalized blackmail. Had the sixth man been less choleric and more worldly wise, he would have yielded as did the other five. Since he did not, his name will appear presently in the roster of those physicians whose "improper sale or dispensing of narcotics" was due to "wilful disregard of the law," and who therefore were "tried in courts."

And the chances are just about 96 to 4 that the name of this wilful physician will be found a little later in the list of those "convicted of violation of the Harrison Law." Whether he receives a prison sentence (up to five years for each prescription) or a fine (up to two thousand dollars ditto) or both, or is liberated on parole—perhaps with admonition to abstain from prescribing narcotics for a named term of years—will depend upon the state of mind or character of digestion of the particular Federal judge before whom the case is tried.

A SIMPLE SOLUTION

The persecution of physicians in America, under pretended aegis of Federal Law, has been carried out (with the aid of unwitting fanatics) solely in the interest of the illicit drug trafficker—the dope smuggler and peddler.

If physicians were allowed to prescribe for the victims of drug addiction disease, so that these sick people could legally secure the medicine without which they cannot maintain integrity of mind or body (or in many cases, life itself), there would not remain a single patron for the dope peddler in America; and the billion-dollar industry known as the illicit drug traffic would be a thing of the past.

Think that axiomatic statement over, and you have the clue to the entire narcotic drug situation.

CHAPTER XX

Legal Prescriptions by the Million

DURING the decade 1925-1934, the amount of opium legally imported into the United States for consumption aggregated more than 1,300 tons, or 18,200,000,000 grains. The mean population for the period being about 121,000,000, this provides upward of 150 grains per capita, or 15 grains as the annual allowance for every man, woman, and child.

This is but a fraction of the amount of opium required to supply the alkaloidal products (morphine and heroin chiefly) illicitly imported; but it is, nevertheless, a notable quantity, and it is interesting to reflect that every grain of all the billions might be traced, by official records, in its passage through various hands, from importer to consumer. There are five groups or classes of such intermediaries, with the following roster on June 30, 1934: (1) Importers, manufacturers, producers, and compounders, numbering 218 registered persons or firms; (2) wholesale dealers, with 1,426 registrants; (3) retail dealers (druggists), with 49,907 registrants; (4) physicians, dentists, veterinarians, and other practitioners lawfully entitled to distribute or administer narcotic drugs, with 144,643 registrants; and (5) manufacturers and distributors of "exempt" preparations, with 121,200 registrants, including persons or firms also registered in one or more of the other classes.

It will be seen that manufacturers and wholesale dealers are few in number. They handle drugs in bulk, and are not authorized to sell to the consumer. Class 5 registrants are numerous, but they deal with bottled preparations, manu-

factured in bulk and sold over the counter like any other patent or proprietary medicines, except that a record must be kept of each sale. About 18.8 per cent, or not far from one-fifth of the entire quantity of opium imported, reaches the consumer in these bottled preparations, requiring no written order from the consumer.

The remainder of the fifty or more tons of opium imported annually can be distributed to the consumer solely by registered druggists on the written order (prescription) of physicians, dentists, and veterinary surgeons. Dentists nowadays use mostly a synthetic substitute for cocaine, and have no occasion to use opiates at all, and hence are seldom registered to handle narcotics. Veterinarians are few in number, and their use of narcotic drugs appears to be of negligible importance, in the relative scale. Practically, then, the "narcotics problem," so far as the distribution of legally imported opium and its products is concerned, narrows down to the consideration of the prescriptions of physicians, as filled by registered druggists.

The Government Report shows 67.60 tons of opium imported in 1934 with 18.8 per cent used for "exempt" preparations. This leaves about 766,460,000 grains of opium to be distributed on prescription. If we assume that an average prescription calls for ten grains of opium (or its equivalent in alkaloidal products) we disclose about 76,646,000 prescriptions. This allows, for each of the 49,907 registered druggists, about 1,530 prescriptions a year, or 30 each week. The 144,643 physicians (or dentists or veterinarians) average 530 prescriptions each for the year, or 10 every week. (We are concerned with prescriptions for narcotic drugs only, of course; indeed, we deal solely with opium and its derivatives.)

I have several reasons for making these calculations. I wish, in the first place, to call attention to the amount of work done by the agents of the Narcotics Bureau in checking—with careful

scrutiny as to quantity, etc.—76,646,000 prescriptions every twelvemonth. We are told in Government reports of some of the details of the work—reports to local Collectors of Internal Revenue, reports to the Narcotics Bureau at Washington, with investigations based on such reports, and further investigations initiated by field enforcement officers based on information other than the monthly reports.

This suggests an enormous amount of entirely useless labor, highly characteristic of bureaucratic work in general.

There is of course no reason, under the Harrison Law, to follow the drug beyond its purchase by the retail dealer (druggist), who buys parcels bearing the excise stamp that represents the last modicum of tax the law exacts.

But there is abundant reason, under the Blackmail Code, for following the drug on to the consumer.

The essential feature of the Code, it will be recalled, is that it dictates to the physician as to just what use he shall make of his prescription blank, when narcotics are in question. In particular, it forbids him to prescribe opiates to alleviate the suffering of a patient having drug addiction disease (for the purpose of "comforting his addiction") under any circumstances whatever. And of course the simple way to judge whether any physician has disregarded this interdiction, is to check up on the 76,646,000 prescriptions.

This brings us to my second, and chief, reason for making the calculation that reveals the prescriptions. I wanted to make it clear that such prescriptions are no rarity. We saw that every average drug store receives (and must file for two years) upward of 1,530 of these documents every year. Each average doctor is responsible for 530 of these interesting documents—or 1,060 for the two-year period during which they must be kept on file at the drug store and in duplicate in his office.

Wherefore it follows that when a Narcotics agent decides to

blackmail some physician in a given community (as is decided many hundred times every year), he may choose his quarry at leisure, and gather a formidable bundle of "incriminating" prescriptions, with full assurance that, if the case goes to trial, this exhibit will convince any jury that the physician has long been in the business of peddling narcotics in "violation of the Harrison Law."

Of course it may not be necessary to bring the case into court. A visit to the doctor's office, and the exhibition of a packet of prescriptions (absolutely legal and ethical prescriptions, but now given sinister significance by the agent of the "Government"), will probably engender a desire to "compromise" on the part of the guileless man of medicine. If, however, it is desirable to make an example of some physician of the community (in the interest of the dope peddler market), the physician may not even be given the opportunity to "compromise," but may be marked for slaughter from the outset.

In that case, the second act of the frame-up will be the introduction of a Government stool pigeon—euphemistically known as an "informer." The process of entrapment then goes forward along standardized lines that have proved effective in many thousands of cases.

Chapter XXI

A Word About Stool Pigeons

IT MUST be obvious that the Government would have no occasion to introduce a stool pigeon for the entrapment of the physician were any actual crime in question. If the Harrison Law has been violated, it was solely by the writing of prescriptions, which are in evidence—hundreds of them. Why should it be necessary to secure more prescriptions—written now for the stool pigeon?

An interesting question, is it not?

The answer is very simple. It is perfectly clear to the Narcotic agent that the physician has infringed no law; nor even the exactions of the Blackmail Code. The prescriptions he has written are perfectly valid, legal, and ethical. A case framed with these alone for background could not hope to succeed, even though backed with all the guile and sophistry made potent by twenty years of court procedure.

It is necessary to have a paid witness, practiced and unscrupulous; an addict who is permitted to receive the drug he craves, in part payment for his services, and whose further emolument (I quote from sworn testimony) varies with the measure of his success in the entrapment of physicians.

It might be supposed that, from the standpoint of the blackmailers, the case would be complicated by the fact that drug addiction has been recognized as a disease, and the drug addict a subject for treatment, by the Supreme Court, as well as in such a Congressional finding as the Porter Narcotics Farm Act. But this is no great handicap, because scarcely a Federal

judge (with the notable exceptions of Justice John C. Bowen, of Seattle, and Justice Leon R. Yankwich, of Los Angeles) has had the courage to oppose the Narcotics Bureau, and rule in accordance with the Law, in contradistinction to the Blackmail Code. So it will *not* be held that the physician was justified in prescribing morphine for the stool pigeon patient merely for alleviation of suffering due to addiction.

On the other hand, it is admitted to be permissible, even under the Code, to prescribe morphine for an addict who suffers also from some other type of painful and incurable pathology —for example, cancer, late stage tuberculosis, or syphilis of the central nervous system. The ideal stool pigeon, then, is one who either has one of these maladies or is good enough actor to fake the symptoms of one of them.

In either case, if the doctor prescribes for him, the frame-up is complete. The unsuspecting physician is "hooked."

For all that is now necessary is to get some complaisant physician to make casual examination of the patient (who no longer fakes symptoms, or whose actual symptoms are obscure), and certify that he finds no evidence of the malady which the prescribing physician named in his records of the case. The patient himself will of course swear that he never had the disease, and did not claim to have it.

Every act of the physician will be made to seem sinister.

If he called in a consultant to verify his diagnosis, that act will be charged as evidence of criminal intent, and both physicians will be indicted for Conspiracy. In almost stupefied amazement, the physicians who never dreamed of violating any law or regulation, will watch their own slow, inevitable enmeshment in the coils of the Blackmail Code.

They may count themselves lucky if (as in a specific case I have in mind) the prescribing physician escapes with a single year of prison sentence (reduced from a nominal thirteen-year

sentence), while the consultant (who had no connection whatever with the case beyond examining the patient in consultation) is given "probation," with orders to abstain from prescribing any narcotic drug for a term of two years.

Some details of the methods by which such necromantic efficiency is attained for the Blackmail Code are given in other chapters. Here I will only note that to forbid a physician to prescribe morphine is like forbidding a surgeon to use a knife, a painter to use a brush, or a carpenter to use a saw; adding that the interdiction is obviously illegal, since the Harrison Act provides no such penalty.

However, that an illegal judgment should climax an illegal trial based on an illegal indictment resulting from an illegal entrapment of an innocent man, serves but to prove the beautiful consistency of the Blackmail Code.

Incidentally, a judgment that forbade a physician to prescribe narcotics obviously serves the interests of the dope peddler quite as well as if the physician were actually imprisoned—and the seeming clemency of the sentence perhaps forestalls publicity that might arouse the community, and in particular the medical profession, to full comprehension of the outrage that has been practiced, in the name of the "Government" and under pretended aegis of Federal law, against citizens innocent of any wrongdoing in thought or deed.

Chapter XXII

The Physician As Scapegoat

BUT why is it necessary to arrest innocent physicians in order to give the illicit drug racketeer Government protection?

Simply because the physician is, *ex officio,* the only person who can legally administer (directly or by prescription) a single dose of any narcotic drug to anybody. That elemental truth is sometimes overlooked when the narcotics problem is under discussion. But such is the law—not Federal law, but State law. Federal law (the Harrison Act) merely provides that only persons qualified by State laws to prescribe drugs are eligible for Federal permits to prescribe narcotics. But for the present purpose, this is a distinction without a difference.

Suffice it that there is *no* law permitting any one but a physician (we may overlook dentists and veterinarians in the present discussion) to prescribe or administer narcotic drugs.

Nor is there any Federal law that in any way limits or controls the prescribing or administration of any narcotic drug by a physician after he has obtained his permit.

The Harrison Special Tax Law no more limits or restricts the physician in dispensing narcotic drugs to his patients than any other tax law limits the sale of gasoline by a licensed filling station to any fixed quantity or to any particular type of customer, or of cigarettes by an authorized dealer.

If any registered physician wished to prescribe morphine, for example, in any quantity needed, for any and every morphine addict who came to him as a patient, there is absolutely nothing in the Harrison Special Tax Law (commonly called the Nar-

cotic Law) to prevent him from doing so. No Federal law has jurisdiction over the professional activities of the physician.

In the light of what has happened during the past twenty years, it is difficult to grasp the simple truths just presented. Very few physicians know that such is the law. And those that do know it are not likely to act on their knowledge, because they know also that the Law is ignored and flouted by the Federal Government, as represented by the Narcotics Bureau, U. S. Attorneys, and Federal Judges, in spite of the clear interpretation given by the Supreme Court.

They know that a Code, issued by a prohibition agent, and sustained by the Narcotics Bureau and the Department of Justice, now does service for law, and this Code *does* restrict the professional activities of the physician, though there is no legal warrant for such restriction. And they know that the Federal Courts (short of the Supreme Court) are likely to uphold the code, in defiance of the Law. The wise physician does not care to cross swords with the local United States Attorney and Federal District Judge (backed by Narcotics Commissioner and Attorney General of the United States).

He may not greatly respect Government high officials that flout the Law, but he is not foolish enough to imagine that he can best them in a legal battle, merely because he happens to be Right.

So he strives to obey the Code, and forget the rights that are his under the discredited Law.

This means, practically, that the physician will not prescribe narcotics for any patient who is an addict. If he holds absolutely to that rule, he will have no trouble (unless some Government agent has a personal grudge against him, in which case he may be framed even then). The patient he refuses to treat will go to the peddler (having no other resource) and the billion-dollar dope industry is intact.

Nor would it be difficult to follow this course, were it not for one or two complicating circumstances. The physician has no desire to prescribe for the addict. You may take that as almost axiomatic. The average physician wishes he might never see an addict. The average physician knows nothing about drug addiction or its treatment. He knows that any addicts he has ever seen (and he probably has seen very few) were disagreeable patients, mostly with psychopathic twists. Dealing with them gave him scant professional or personal satisfaction.

But the difficulty is this: It is a chief part of a physician's business to relieve distress; to quell pain; to make patients feel more comfortable. The physician cannot often flatter himself that he has actually saved a life. But he knows that he has relieved suffering—quelled the agony of a victim of a kidney stone, a gall stone, a lacerated wound, a fractured limb, a griping colic, a stabbing cancer, the twinging girdle pain of a tabetic—a thousand times.

And he knows that the one drug that has accomplished these thousand miracles is morphine. There is no substitute.

Now there comes to him a patient whose every aspect—of feature, posture, manner, pulse-beat, voice-quiver—tells of tortured nerves. The patient's underlying malady is syphilis of the central nervous system. His gait shows that the disease has involved the spinal cord. The frightful girdle pains that the patient describes are characteristic symptoms of the malady. There are half a dozen other symptoms, technical, but undebatable—the so-called "Romberg sign," the pupillary reflex that goes by the name "Argyll-Robertson," exaggerated knee-jerk, low blood pressure. The man is a wreck, at the verge of collapse. He is deathly pale. Sweat pores from his skin. He is all a tremor. His life seems threatened.

Can the doctor do nothing? Oh, yes, the Doctor knows just what should be done. He knows that he has but to write a

few words on the prescription blank that lies at his elbow, and the patient, tottering to the nearest drug store, will receive the remedy that would restore him miraculously to a semblance of normality and the actuality of physical and mental comfort.

But if the physician is wise, he will not write the prescription. For a glance at the patient's arm has shown him that this man is a drug addict. There is only one drug that can give him relief. That drug, of course, is morphine—the same drug that has given relief to all the other sufferers. The law of the land permits the physician to write the prescription, and rescue the sufferer. The law of humanity seems to demand that he write it.

But the law of self-preservation commands the physician to leave the prescription unwritten. A few words scribbled on that sheet of paper—legal words, ethical words, humane words—might bring the physician face to face with Stern Retribution, in the form of Arrest by a Federal Narcotics agent, Indictment by a Federal grand jury, Prosecution by a United States Attorney, a trial directed by a Federal Judge who acts as advocate and a verdict of Guilty of Felony by a jury—followed by a Sentence that might be "a two thousand dollar fine, and confinement in a Federal prison for a term of five years."

Those are the sequels that the physician may see on the prescription blank, as he reaches for it. Then it is a question of compassion *versus,* shall we say fear or wisdom? Desire to aid a suffering patient *versus* desire to remain at liberty. Love of humanity *versus* fear of a weasel-faced Government agent, a stool pigeon, known to be lying in wait, eager to act in the interests of his unofficial employers of the billion-dollar dope industry.

If the physician is worldly-wise, he will not write the prescription. He will let the blank lie there, and show the patient to the door. If he is chicken-hearted about witnessing human

suffering, as most physicians are, let him give the patient a ten dollar bill—should he chance by exception to have one—and tell him to seek the nearest "dope" peddler, to gain relief. And never to return.

Do you begin to get the idea? If the physician had not known that the Government agent was lurking in the background (perhaps not to appear for weeks, but still in the offing and certain sooner or later to appear), he would have written the prescription. The patient would have received at the drug store, for thirty or forty cents, the drug for which he must pay the peddler ten dollars.

But the druggist would have given no part of the thirty cents to the Government agent. The illicit industry, which the Government agent is bound to protect, would have lost the ten dollars. The billion-dollar bank roll would have been short by just that amount.

Well, ten dollars from a billion is not a big deficit. No; but there are upward of 160,000 physicians in the country, and if each one of them wrote a prescription today that robbed the dope peddler of ten dollars, the dent in the day's income would be $1,600,000. *That* would be a significant dent; for you recall that the daily profit—to make the aggregate yearly billion—is only $3,000,000.

It follows that if each physician were to write two such prescriptions, the total dope-peddler sales for the day would be annulled. And if the physicians' prescriptions had each called for a week's supply for the sufferers (as they might well have done), the illicit drug industry that week would register a blank—as against the $21,000,000 profit that had been counted on.

To prevent that catastrophe, is the task of the Government Narcotics agents. Were they to falter—were they to permit the physicians to write the prescriptions, as they are legally en-

titled to do—the billion-dollar industry would collapse in a week. Within a month, the Narcotics smuggler and peddler would vanish from the land. (Except, indeed, that protection would still be given them in a few States that have enacted the Narcotic Bureau's "Uniform Law," based on the Code—until such time as this law can be repealed.)

Bulwarked against that catastrophe, however, is the stalwart Narcotics Bureau, with its law-defying Code (supported in a few misguided States by a "Uniform Law" based on the Code). So long as that bulwark holds, the billion-dollar industry is secure. And up to the present, it has proved an invincible barricade. The most alarming threat it ever received was from the Narcotics Clinic at Los Angeles, where organized Medicine undertook to do for the afflicted addict what private medicine dared not attempt.

But that effort, though backed by municipal and State forces —the Mayor of the city, the Health Board, the local and State Narcotics officials, the County Hospital as well as the County Medical Association—and though monumentally successful during the three years of its operation, fell before the organized attack of the Federal coadjutors of the billion-dollar racket.

Which goes to show that a billion-dollar bankroll is a splendid adjuvant in any plan that involves the flouting of Law, order, and humanitarianism.

If we remind you that the overthrow of the Clinic was accomplished only with the framing of three Clinic physicians, with arrests and indictments some of which were kept on the calendar for more than three years, are still pending (after almost three years) and one of which resulted in convictions of innocent physicians, with a prison sentence, our thesis that the physician plays the role of "goat" in the billion-dollar illicit drug comedy will perhaps be regarded as sufficiently illustrated.

Chapter XXIII

Ignorance and Fanaticism

IT REMAINS to examine another curious aspect of the narcotics situation. The facts and conditions being as presented—and there seems to be no way to escape conclusions so obvious—how does it happen that many excellent people, who are so situated that no one can suspect them of sharing in the profits of the billion-dollar racket, nevertheless lend aid to the racketeers, by opposing any change in the illegal Code that brought the racketeer into being and has kept him secure in an enterprise for him so lucrative and for the public so costly?

Ignorance and fanaticism, taken together, no doubt supply the full answer.

Against fanaticism it is useless to inveigh. But it may be worthwhile to attempt to enlighten the sane reader as to certain things about which there appears to be almost universal misunderstanding.

A clue may be furnished by consideration of the only objection which, so far as I am aware, has ever been offered by the coadjutors of the "dope" peddler and smuggler in their attack on the Narcotic Clinic. This is the allegation that some Clinic patients may have received prescriptions for larger quantities of morphine than they personally required to keep them "in balance."

Let it first be recalled that even the Code of the Narcotics Bureau permits the administration of morphine to patients having "painful and incurable pathology" other than drug addiction. It is not denied, then, that the prescribing of morphine

for the Clinic patients was legal and legitimate. Indeed, after the chief Clinic physicians were arrested, the Federal Narcotics officer in charge of the Pacific Division took the Clinic in hand, and personally requested a physician of his acquaintance to continue prescribing for these patients. But he, personally, sat at the elbow of this physician, and sought to demonstrate that most or all of them could get along with smaller dosage than had been hitherto prescribed for them.

It may be noted in passing that the attempt did not succeed. The patients could not be kept comfortable on the smaller dosage (based on a strange delusion that six grains is the maximum requirement of any individual—in defiance of world-wide experience), and the physician resigned, *and was then arrested and brought to trial* because he prescribed for three of the patients after he left the Clinic. That fantastic happening belongs in the picture, but the point of the moment is the question whether patients actually did receive more morphine than they needed, and were able to barter the excess.

Against the probability of this, it may be noted that all the patients had been examined again and again by at least two hospital physicians of wide experience, and that every effort was made to keep the dosage at a minimum.

But the really material question is, not whether such a thing did occur in some cases (a patient receiving, say, ten grains a day, though requiring only eight, and bartering the remaining two), but—What is the significance of such a happening? Why should the beneficent work of the Clinic be condemned if it were proved that it did not always operate with ideal efficiency?

The obvious answer, of course, is that the patient who, by hypothesis, barters a few grains of morphine, is directly competing with the dope peddler, and taking just so much money away from the billion-dollar racket. The difference is that the

patient has at best an insignificant quantity to sell, and that this is morphine received at a drug store, which therefore has paid its full excise tax, whereas the dope peddler's supplies (unlimited in quantity) have paid no tax whatever. The fact remains, however, that the dope peddler is injured—just as he is injured on a larger scale by every prescription written for a Clinic patient.

But if you are not arguing from the standpoint of the dope peddler, and have no desire to uphold his activities, what, then, can be the objection to the Clinic, which rescued patients from the peddler, and enabled them to secure the medicine they need at a cost of four cents a grain, instead of the peddler's dollar a grain? What harm has resulted if some of the patients receive a surplus, and can undersell the peddler to the extent of a few grains?

I labor the point, because I am trying to dig into the minds of certain very earnest philanthropists, who strenuously oppose every effort to rescue sick people from the clutches of the dope peddler, even when the effort is made collectively, as at the Los Angeles Clinic, and under such conditions that no suggestion of possible private gain for any one (except the patients themselves) can be made or for a moment entertained.

The only rational answer I have ever heard is the simple and logical one that the Clinic interferes with the dope traffic—cuts into the billion-dollar racket. That argument is incontestible, and from the standpoint of the Federal authorities it appears to be adequate. They have stopped every Clinic of similar kind that has been operated anywhere in the United States.

Beyond that, there remains only the domain of superstition. If you believe that it is sinful to permit sick people to have medicine to relieve their suffering, then you may logically inveigh against the humane efforts of the Clinic physicians. There was

a time when pious people were horrified at the thought of assuaging the pangs of childbirth, on the ground that such agony was God-given, and should be considered a blessing. But that argument is out of date.

The argument against assuaging the suffering of the victims of addiction disease is of the same category. Any one who advances such an argument is not quite sane. He belongs to the class of what I have termed unwitting—or witless—coadjutors of the dope peddler. He is a public menace—a far worse enemy than the witting coadjutor, who opposes the Clinic because he wishes to protect his share of the billion-dollar bank roll. This hypocrite will presently be unmasked, for sooner or later the public detects insincerity.

But the sincere, earnest fanatic, placed beyond the reach of reason by his obsession, is a perennial menace to every humanitarian movement.

The man who argues that the drug addict's frantic urge to secure morphine does not represent an actual human need, will remain to the end the foremost coadjutor of the illicit drug racketeer.

Chapter XXIV

A Kindergarten Exercise

AND now a few concluding words as to another slightly different aspect of the narcotics situation. There have been those who imagined that the Harrison Law was directed against physicians.

Nothing could be more absurdly fallacious.

The law was designed to keep the distribution of narcotics within legitimate and legal bounds. And the only legitimate or legal distributor of narcotics, to the ultimate consumer, is the physician.

Who else should or could dispense the most important medicines in the Pharmacopœia?

Who else knows anything about their physiological properties, their poisonous properties, their proper uses and dosage?

But, you say, there are doctors who would abuse the privilege if allowed to prescribe unchecked. Have it so. There are doctors who would commit robberies, forgeries, murders, what you will. But I think you will admit that the percentage of such doctors is small. Statistics warrant that assertion. And as to the prescribing of narcotic drugs, what is the point? Practically all drugs that have efficacy in medicine are poisons if given to the wrong person or in wrong dosage.

You may kill a diabetic with a small dose of insulin, if you mistake his hypoglycæmia for hyperglycæmia. Any doctor could give medicines to injure, or for that matter kill, any patient at any time if he chose to do so. Do you suggest that a lay policeman should stand at the elbow of every doctor in his office, to guard against such an eventuality?

Come, let us—not *reason* together—but merely act or talk as if we had a glimmer of *common sense.* Does any one think it better that politically appointed revenue officers—laymen, without a suspicion of medical knowledge—should decide *who* should receive medicine, and *how* and *when* and in *what dosage?* Is such a suggestion rational? Does it make sense?

Ask the child in the Kindergarten. Then explain to the child that this is what is done in the United States, and has been done for the past fifteen years. But go on and explain to the child—and if the child is six years old it will understand—that the reason this has been done, and is still done, is because certain people in high authority make money by refusing to let sick people be treated by doctors, and forcing them to go to peddlers to get the medicine they need—"medicine that they have to have," you may explain to the child, "just as you have to have bread to eat and milk to drink."

And the child will open its eyes in wonder, and ask if you think it is right that sick people should be so treated.

And your reply? Well, I leave that to you.

And now, one last word about the doctor. Let us agree that he is not to be trusted—though I hate to admit that he is not about as trustworthy as the dope peddler or the Government officer who upholds the peddler. But have it your own way. The doctor is not to be trusted. Fortunately we do not need to trust him. The Harrison Law—the law, this time; not the Code—provides that every prescription for narcotics written by the doctor shall be kept on file at the pharmacy where it is filled (and a duplicate in the doctor's office) for inspection by Government agents.

So we don't need to trust the doctor. His every act is open to inspection. Every grain of narcotics he prescribes will be registered—with the name and address of the recipient. What chance, then, has the doctor to rival the dope peddler, however

keen his desire, since his every transaction is a matter of record, while every transaction of the dope peddler is surreptitious?

At the worst, will the doctor be as sedulous to make drug addicts and keep them addicted as the dope peddler is today? Think that one over. Take a look at your family physician, and ask yourself if, after all, he is a more despicable creature than the average dope peddler, as you hear him described.

Then ask yourself, further, whether it might not be safe to take a sporting chance on giving a trial to the Harrison Law, of 1914, which has never been tested, by putting the question of the medical treatment of a half-million sick people into the hands of the medical profession—even though by so doing you should (a) annul the Narcotics Code that the Supreme Court has pronounced unconstitutional, (b) disrupt the Narcotics Bureau itself, (c) take away several million dollars of graft money from numerous officials in high or low places, (d) vacate Federal courts, (e) reduce the population of jails and prisons, and (f) put the entire illicit drug industry, with its billion-dollar turnover, out of business.

Think this over a little. Discuss it with Johnnie when he comes from the Kindergarten class. And see if, jointly and collectively, you can find the answer.

IPSO FACTO RACKETEERS

Anyone who would gain a clear comprehension of the character, origin, and influence of the Narcotics "Dope" Ring, must know that it has two groups of apparently very different members or proponents:

Group A: What may be called the obvious members of the Ring, the dope smugglers and peddlers, who directly handle the contraband goods and are the first recipients of the billion-dollar income;

Group B: What may be called the *ipso facto* members or proponents of the Ring, whose support alone makes the existence of the illicit drug traffic possible, and without whose cooperation the obvious members of the Ring would find themselves bereft of customers, to the abolition of the billion-dollar bankroll.

There are three groups of these *ipso facto* members of the fraternity: (1) Federal Narcotics officers and agents; (2) United States Attorneys; and (3) Federal District Judges.

Members of the first group have been supported by successive Secretaries of the Treasury; members of the second group by successive Attorney Generals of the U. S.; members of the third group by various members of the Appellate Division of the Federal Court.

As a matter of course, members of the "obvious" group of gangsters are violators of Federal laws—the laws against smuggling and the Harrison Act, which forbids sale of narcotics except by registered persons of specified callings. The members of the *"ipso facto"* Ring are not so patently but no less persistently violators of the Federal law—the Harrison Act; not indeed, through direct trafficking (except to a minor extent in supplying dope to stool pigeons), but through refusal to accept the interpretation of the Harrison Act given by the Supreme Court of the United States.

If members of any one of the three groups—Narcotics officers, U. S. Attorneys, and Federal Judges—could be induced or forced to recognize the decisions of the Supreme Court, and to act accordingly, the Dope ring would be disbanded almost overnight—there would cease to be any illicit drug traffic, and the billion-dollar bankroll would be no more.

Properly interpreted, then, "the Narcotic drug problem" of which even our Presidents prate on occasion, may be stated in these terms:

How can one or another of three groups of Federal officials be made to obey the Federal law?

It is a problem for which no one as yet has found the answer.

Perhaps a few words of explanation should be added, to make the terms of the problem clear. The essence of the matter is this:

The Harrison Law was designed essentially to place the distribution of narcotic drugs in the hands of physicians. Similar laws in all European countries are enforced, with the result that drug addiction is nowhere regarded as a problem of great significance, and nothing at all comparable to our dope ring (with billion-dollar turnover) exists or is dreamed of.

But in this country, the Harrison Law was at once superseded by "Regulations," put out by the Commissioner of Internal Revenue and subsequently sponsored by Prohibition officers and Narcotics Bureau, which reversed the meaning and import of the law, and, by denying physicians the right or duty to treat drug addiction, brought into being an obvious dope ring to cater to the imperious needs of the great group of unfortunates who require regular use of narcotics in order to keep them in anything like normal condition.

Had not the Prohibition and Narcotics officers had the support of

Secretaries of the Treasury, their illegal "Regulations," or "Codes" would have been null and void—and the Harrison Law could have operated to keep the distribution of narcotics in the hands of physicians; and there would have been no dope smugglers and peddlers.

Secondly, had not United States Attorneys (supported by Attorney Generals) accepted the Code, in place of the law, and proceeded to cooperate with the Narcotics authorities by indicting and prosecuting physicians who attempted to act under the Harrison Law, the schemes of the Narcotics Bureau would have fallen flat, and again there would have been no Dope Ring, no illicit drug traffic.

In the third place, had not Federal District Judges (often supported by Circuit Judges) upheld the Narcotics Bureau and the United States Attorneys in their acceptance of the illegal Code (as against the Harrison Law), the illegal prosecution of physicians would have failed (instead of resulting in 95 per cent of convictions), and soon the other members of the coalition would have seen the futility of further effort to supplant the Harrison Law with an illegal Code. The sick people would then have been restored to medical attention, as the Harrison Law contemplates; and no customers would remain for the obvious members of the Dope Ring. (For certainly no sick man would elect to pay one dollar a grain for the medicine that would normally cost two or three cents a grain at the pharmacy.)

I hope this makes clear what is meant by *ipso facto* members of the Dope Ring. What is implied is that every member of any one of the three groups in question who refuses to accept the clear decisions of the Supreme Court (to the effect that Codes are not Laws, and that the Harrison Law was never designed to control the practice of medicine, and would be unconstitutional if it were so designed), and accepts in place the illegal Code (which denies medical treatment to the unfortunate victim of addiction disease, thereby forcing him into the clutches of the dope peddler)—that every such person becomes *ipso facto* a coadjutor of the dope peddler whose interests he serves, and therefore effectively a member of the Dope Ring.

It matters not at all whether any individual member of the *Ipso Facto* Dope Ring receives a monetary emolument from the billion-dollar bankroll, or whether his reward is of some less tangible kind. It matters not whether he may even act through ignorance or fanaticism rather than through cupidity;—none the less is he effectively a member of the gang.

And the Narcotics Problem, let it be repeated, is simply this: How can the members of any one group of the Ipso Facto Dope Racketeers be made to recognize the Harrison Law (as interpreted by the Supreme Court of the United States) as having greater authority than the uncon-

stitutional Code that supports the Obvious Dope Racketeers and generates the billion-dollar bankroll?

Whoso can solve that problem will earn the gratitude of his generation. The emancipation of the most pitiful victims of bureaucratic racketeering this country has known will follow as a matter of course; jails and prisons will be emptied; Court calendars will cease to overflow; and what has been termed the American Inquisition will come to an end.

But let no one suppose that the Ipso Facto Racketeers, flanked by the Obvious Racketeers with their billion-dollar bankroll, offer an easy conquest. As yet, after nearly twenty years, they still represent an almost unbroken phalanx.

BOOK IV

Ipso Facto Racketeers in Action

Chapter XXV

Official Interpretations

THE conventional charge, a thousand times repeated, in cases of alleged violation of the Harrison Law is that the physician who prescribed narcotics was not treating the patient in the course of his professional practice. The foundation for the charge is the allegation that the patient did not suffer from any severe pathology other than addiction. If this claim can be established, in the minds of the jurors, a verdict of guilty can be relied upon.

The situation just outlined involves an absolute *non sequitor*. The Harrison Act does indeed provide (by negative statement) that the physician's administration of narcotics shall be "in the course of his professional practice only." But it makes no suggestion whatever as to what line of conduct implies "professional practice;" and nowhere does it make the slightest reference to narcotic addiction or to any other malady or condition. The Narcotics Commissioner himself would not contend that anything in the wording of the law could logically be interpreted as forbidding the physician to prescribe narcotics for drug addicts—or as making any other restriction on the physician's exercise of his own professional judgment.

How then explain the court procedure which makes claim that a physician who prescribes for a patient who is not the victim of some "pathology" other than addiction has violated the Harrison Law?

The explanation furnishes a very pretty illustration of the niceties of juridical procedure. It appears that in the early days

of the Harrison Law, twenty years ago, questions arose as to the interpretation of the phrase about "professional practice." The Collector of Internal Revenue, in answering a letter, read into the Law the meaning that physicians, though permitted to prescribe in accordance with their own judgment, should be called upon to explain the reason for any prescription that called for unusual doses of narcotic medicines.

The only word that properly describes this "interpretation" is "silly." The physician is the only person who is authorized to prescribe narcotics at all. No one else is assumed to know anything about the uses of medicines. No one else can legally administer a single dose. Yet the naive letter of the Collector assumes that the law provides that the physician must explain *to a lay policeman* just what is the basis of his professional judgments. He must tell the narcotics agent just why he thinks one patient requires larger doses than another of a medicine (which incidentally chances to be the most important drug in the pharmacopœia) which physicians prescribe to the extent of several tons every year, and of which no one else (including the narcotics agent) can legally dispense a single grain.

And, to complete the joke, it was soon assumed by the narcotics authorities that if the lay policeman was not satisfied with the physician's explanation of his professional practice, he could hale the doctor to court, and have him tried for a felony.

Not unnaturally some physicians resented this, and even had the effrontery to challenge the authority of the narcotics agents. In one such case (in the year 1919), an Appeal went to the Supreme Court, via the Appellate Division, with this question:

> "If a practicing and registered physician issues an order for morphine to an habitual user thereof, *the order not being issued by him in the course of professional treatment* in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is such order a physician's prescription under exception (b) of section 2?"

The question was answered in the negative. Even at that, there was a sharp division in the Court, Chief Justice White and Justices McKenna, Van de Vanter and McReynolds dissenting, and holding the Harrison Act itself unconstitutional. A similar decision was given, a year later, in a case where it was stated that a physician had procured "sale of morphine sulphate" . . . *"by means of a prescription issued not to a patient and not in the course of his professional practice, contrary to the prohibition of section 2 of the Act."*

These are the decisions (dated 1918 and 1919, respectively) on which the narcotics authorities have relied, throughout the ensuing years, in claiming that a physician may not legally prescribe narcotics for an addict who has no "other pathology." Even taken at face value, it is a shadowy claim. For please note that the cases presented beg the question at the outset, in the phrases that I have italicised, which expressly state that the accused physician did *not* prescribe for a patient in the course of professional practice.

If, as stated, the physician did not act in professional capacity (was not treating a patient), it would go without saying that he violated the law which provides that no one but a physician acting in professional capacity shall dispense or prescribe narcotics.

Effectively, then, what the question amounted to was as cogent as this: "If a person has committed a murder, is he a murderer?" Or, specifically, this: "If a person has clearly violated the Harrison Narcotics Law is he guilty of violating the Harrison Narcotics Law?"

It is rather obvious, I take it, that the question really at issue should be, not Is the man guilty *if* he violated the law; but *did* he violate the law? The physician, sitting there in his office, supposedly practicing his profession, issues a prescription to a sick person who came to him for treatment. On what ground

do we decide that this person was not a patient, and that the physician did not write the prescription in the course of his professional practice?

Pretty obviously, *that* is the vital question. The Supreme Court at the moment overlooked that point. They made amends six years later (Linder case, 1925) by declaring that drug addiction is a disease that the physician is entitled to treat; and that, in any case, Federal Law has no jurisdiction over the practice of a profession. But the earlier decision, trumpeted abroad, continued to be used as foundation for the victimizing of physicians; the later decision being totally ignored.

The phrases of the equivocal question that the Supreme Court had authenticated (*but afterward in effect disavowed*) were incorporated into Federal Indictments in hundreds of cases, year after year. Each stereotyped "count" of the Indictment charges that a prescription of given date (the existence of which is never in dispute) was issued "not in good faith and not in the course of professional practice only . . ." To emphasize the charge, it is further alleged that the person who received the prescription had no disease calling for treatment with narcotics, and that the narcotics were in fact not issued for the treatment of any disease.

The fact that addiction itself has been recognized as a disease in a Supreme Court ruling; and that the Government has established a splendid hospital for the *treatment* of addiction of course finds no mention in the Indictment, nor in the court trial that follows. On the contrary, the Federal District judge (with rare exceptions) will rule that addiction is *not* a condition that the physician is entitled to treat; and that the issuance of a prescription to an addict who had no other pathology is a violation of the Harrison Act.

The explanation is that the average judge never dreams of merely reading a statute and asking himself what it means.

He looks instead for some interpretation made by an Appellate Court (having to do always with some individual case, the particularities of which necessarily more or less confuse the issues). He will verbally admit—indeed, he would earnestly affirm—that the decisions of the Supreme Court are the ultimate authority. But there is nothing to prevent him from fixing on an ancient decision of that Court, and utterly ignoring more recent decisions—as is constantly done in dealing with narcotics cases.

And the District judge who thus flouts his superiors can do so with entire equanimity; for he knows that there is not one chance in a hundred that his misinterpretations of the Law will ever be brought to the attention of the high Tribunal. Upward of five thousand physicians whose only crime was that they wrote prescriptions that no law forbids them to write have been convicted as felons in Federal District courts during the past twenty years; and the cases that have been able to fight their way to the Supreme Court for rehearing are just six in number. Only a shade better than one case in a thousand!

Why, then, should a District judge hesitate to make his own interpretation of the law? Why should he hesitate to declare that a physician may not legally treat addiction, of which the law makes no mention? Why should he hesitate to instruct the jury that the illegal "Regulations" of the Narcotics Bureau are Law?

The answer to each question is that he need not and does not hesitate. Just *why* the average Federal judge thus flouts the law, is a question that need not be opened at the moment.

The Voice of Authority?

The Supreme Court decision in the Linder case, just referred to, was written for the unanimous Court by Mr. Justice

McReynolds (who, as above noted, was one of four Justices who had dissented from the equivocal earlier decisions). In writing the Linder decision, the Justice went out of his way to declare that:

"The Harrison Act makes no mention of addicts or their medical treatment. They are diseased, and proper subjects for such treatment."

He went on to state that the Harrison Act is a pure revenue measure, having no control over the practice of a profession;—that being a matter reserved to the individual States. And he naively added that if the law assumed such power, it "would be invalid and could not be enforced."

Shortly thereafter, in conversation with a friend of mine, Justice McReynolds gave assurance that thenceforth the persecution of physicians in the name of the Harrison Act would cease. Little did the guileless magistrate realize, apparently, that the decisions of the august tribunal for which he had acted as spokesman *have only moral force at best, and may be utterly ignored by any bureau or lower Court that has adequate political backing.*

Little did he or his colleagues dream that for the ensuing thirteen years, at least, the force of that Linder decision, in its bearing on narcotics authorities and Federal District courts, would be precisely *nil.* Little did they dream that the old trick indictment, with its falsified charges, would continue in force, absolutely unmodified, to the undoing of upward of four physicians every week, year in and year out.

They could not have believed that their decision in the Linder case would be scornfully repudiated in the very office of the Attorney General of the United States ten years later; and shrugged aside in countless Federal courts.

They would have deemed it incredible that the Bureau of Narcotics, in the year 1937, would quote the antiquated de-

cision of 1919 (even citing the trick question that evoked it) as final authority for the illegal activities of the Bureau—utterly ignoring the Linder decision of 1925, the Boyd decision of 1926, the Nigro decision of 1928; to say nothing of the famous A A A decision of 1936, in which the Linder decision was quoted and cited as basic law.

Yet these things came to pass. The falsified trick-indictment is doing service in 1938 precisely as it did in 1919. And the narcotics authorities would have us believe that in clinging to their obsolete view of drug addiction as a readily curable condition (holding to discredited interpretations of the law, and thereby, consciously or unwittingly, but all-effectively maintaining the billion-dollar drug racket)—they are acting in good faith, and honestly endeavoring to benefit their fellow men.

One can only say, in the light of the evidence, that if they are sincere in this belief, they will rank in history with the Torquemadas who in the name of Religion burned the heretics and the Cotton Mathers who served God by hanging the witches. But whether they *are* sincere—mere victims of narcotophrenia, beyond reach of reason—is a question regarding which there is opportunity for difference of opinion. The Torquemadas and Cotton Mathers of yore lived in the shadow of dark superstitions. But not within the penumbra of a billion-dollar bankroll. *Conceivably* there might be significance in that distinction.

Chapter XXVI

Tricks of the Trade

A STANDARD method of the Federal prosecutors, in trying physicians for alleged violation of the Harrison Law, is to arrest addict patients, either as conspirators with the physician or as material witnesses, and keep them in jail, where they are taken off the drug, and in due course presented on the witness stand in proof of the contention that the physician might readily have cured them of the drug habit had he cared to do so.

This is the method absolutely standardized in Federal courts. Its tremendous effectiveness is attested by the record of more than 95 per cent of convictions in these cases—the physician being pronounced a felon because he gave medicine to a patient who seemed vitally to need the medicine; whereas, in fact (it will be claimed) the patients did not really need the medicine at all, as their condition while in jail is alleged to demonstrate.

There are, I trust, few readers of these lines who are so guileless as to suppose that this standard procedure is an honest move on the part of the Government prosecutors. These gentlemen are in the business of securing convictions, and all things are fair and ethical in court procedure, as in love and war. The Federal attorney is perfectly aware that he must keep the patient in jail until time for the trial (usually bringing him there under guard), for the excellent reason that he would no longer be available as a "cured" exhibit if he were at large. He would have reverted to the use of the drug, as surely as a duck released from a pen will go back to water.

The Federal attorneys know this, I say. Their task is merely to keep the jury from learning the simple truth of the matter. Mostly they succeed—thanks to the laws of evidence which no one not a lawyer can ever comprehend. And, legal "ethics" being what they are, no one will blame the prosecution for playing this winning card.

Such is the standard procedure, dear reader, in what is euphemistically termed a Federal court of "Justice."

Let me cite a single specific instance of the use of this standardized trick in connection with the two successive trials of a Clinic physician at Los Angeles. Three patients named Mayers, Jensen and Avory (chronic cases suffering from other pathology and certified by hospital physicians as incurable) were indicted along with the physician who had prescribed for them, and "cured" of addiction in jail, that they might be introduced in the conventional manner at the trial of the physician.

For a wonder, the trick barely failed to work—one skeptical juror caused a mistrial. The "cured" addicts were discharged, and of course reverted promptly to the use of the drug, as any one could have predicted.

Some months elapsed before the case was scheduled for retrial. Then the addicts were again jailed, and once more "cured" and thus made available for the usual demonstration. But now the case was tried without jury. A judge, sitting by himself, can disregard the usual hampering rules. He can find out a few facts of the case before him. Things that could never be brought to the knowledge of a jury are quickly revealed. And so we find Judge Yankwich making this succinct but significant summary, in the course of the decision in which he acquitted the physician and applauded his action in giving humane treatment to the patients who had obviously needed treatment:

"As to Mayers, Jensen, and Avory, the evidence shows that the drug was withdrawn from them while they were in jail, by a physician who had no previous experience along these lines. But they have since returned to the habit, except as for such time as it was taken away from them during (the second period of) incarceration."

If I add that two of these patients had been used, during their first period of incarceration, as "cured" exhibits to convict another physician who had also treated them (successfully used, before a jury, with a prison sentence for sequel), perhaps the point under consideration is sufficiently demonstrated. (Incidentally, both have stated that they were coached by a U. S. Attorney to perjure themselves by swearing that they suffered no inconvenience while being taken off the drug.)

Meantime it is officially recorded that scarcely one addict in a thousand has been permanently cured by incarceration, even for a term of years. At the famous narcotics hospital at Spadra, where only supposedly curable cases are admitted, the most optimistic appraisal can claim no more than 15 per cent of cures. A Federal prison official, testifying in a recent narcotics case at Seattle, stated that he had personally treated more than a thousand addicts in Federal prisons, without a single cure.

These are merely typical illustrations from universal experience.

Consider, then, that the addicts *jailed* and brought into court against the physician are by hypothesis victims of *incurable* maladies other than addiction (and hence theoretically eligible to receive adequate "balancing" doses of narcotics as long as they live). Consider, secondly, that the physician is not permitted even to attempt to cure them of addiction while they are ambulatory; and that the physician has no jail or sanitarium into which he could thrust the patients even were he foolish enough to imagine them curable.

Need we further characterize the procedure of the Court of "Justice"?

It may not be amiss, however, to add a few words about the Jail-"cure" trick from the standpoint of the direct victims of the maneuver. Let us examine the specific cases of two of the patients above named as having been twice incarcerated and "cured" for use in prosecuting physicians who treated them. It chances that I have the histories of these two patients before me. They are typical, and therefore the better worth presenting.

Both these men are respectable hard-working citizens of much better than average intelligence. The proof of the latter point is that they have been able for many years to obtain the morphine they imperatively need, often being obliged to pay the extortionate rates of the dope peddler, without ever resorting to dishonest methods of securing the purchase money. I think I am right in saying that neither had ever been accused of committing any crime—except the "crime" of securing medicine at a drug store on the prescription of a reputable physician. (For *that* "crime," both have been twice incarcerated, as we have seen. And both, I believe, were subsequently imprisoned for alleged violations of narcotics laws.)

One of these men was and is a restaurateur. The other was a successful iceman until the narcotics officers put him in jail. After his release, during the depression, he peddled coffee from door to door—until he was sent to jail again. Both men had suffered for many years from painful maladies, diagnosed by many physicians, including those of the Los Angeles Narcotics Clinic. Each man required about twelve grains of morphine per day to keep him comfortable. Securing this, both had every appearance of normal men, aside from the slight physical handicap incident to chronic arthritis (disabling an arm) in one case and locomotor ataxia in the other.

Owing to the painful character of their physical infirmities, both had been addicted to the use of morphine for many years —upward of twenty in each case. Both had tried, as all other addicts try, to rid themselves of the "habit," and had reverted (as all other similarly afflicted sufferers do) to the drug, after varying intervals of days or weeks.

Such is the story of these typical addicts. I challenge any person—even a narcotics fanatic—to cite one single scintilla of a reason why these men should not be permitted to purchase the modicum of morphine that to them is the equivalent of food, at a drug store, for a normal price (say four cents a grain; or perhaps only half that, if proper adjustment were made), legally and legitimately without publicity or palaver; precisely as both are permitted to secure other drugs that are prescribed for their respective "other pathologies."

There is no Federal law that forbids them to do so—unless the Supreme Court is all wrong in its repeated decisions.

Only an illegal, unconstitutional Code, sponsored by misguided Federal authorities, stands between these men and their elemental right to life, liberty, and the pursuit of happiness.

I suggest that any and every Federal authority of responsible position who has a conscious share in the infliction of such diabolical injustice as these sick men have suffered is either an irresponsible fanatic, a psychopathic sadist, or a minion of the Dope Ring. Nay, that understates the case: he is *ipso facto* a *member* of the Dope Ring, even if he does not know it.

In any case, he is totally unfit or utterly unworthy to hold any public office. Whatever his mental state or his moral status, his official position and the misuse he makes of it give him rank as a Public Enemy of the first water.

NARCOTICS AND CRIME

The absurd notion that a narcotic (sleep-producing) medicine could stimulate its recipient to criminal activities is one of the pleasantries

foisted on the public by fanatic and Pharisee propagandists. The sole support for this anomalous contention is the fact that the victim of addiction disease has such imperious need of opiates to keep him normal, sane, or even alive, that he will, if necessity arises, adopt almost any expedient, legal or otherwise, to meet the need. Somewhat as you or I, if denied access to water or food, would ultimately forget ethical considerations to keep from dying of hunger or thirst.

Fanatics who, for whatever reason, wish to make sure that the addict receives no medicine legitimately (insuring the market for the dope peddler), make stock in trade of the *claim* that the addict is the "major criminal" of the country. Government, State, and municipal statistics utterly refute the claim. A Government report (previously cited) shows 2,317 arrests on narcotic charges among 2,274,489 arrests on charges ranging from murder, rape, and robbery to drunken driving.

A recent investigation by Mr. Everett G. Hoffman of the police records of former patients of the Los Angeles Narcotics Clinic tells in a nutshell a typical story. Prior to admission to the Clinic, 65 addicts had been arrested 311 times, for minor delinquencies incident to the securing of the medicine to which legal access was denied them.

During treatment at the Clinic, for periods ranging from a few months to four years, the *same addicts,* now enabled to secure the medicine legitimately and at minimum cost, were self-supporting, law-abiding citizens, NO ONE OF THEM BEING ARRESTED.

After the Clinic was closed (by Federal authorities, in opposition to the wishes of all local sponsors), eight of the patients died from deprivation, and the others were forced back into the clutches of the dope peddler, and again became law-breakers perforce. In the three succeeding years, 16 of the survivors still managed to keep clear of the law. The remaining 41 were arrested 63 times; making a total of 374 arrests for this group of addicts (with 337 jail sentences), very few indeed of whom would ever have violated any law had they been permitted to receive a few cents' worth of medicine from day to day at normal cost—instead of being obliged to go to the peddler and pay a hundred times the normal value.

Would it not be good BUSINESS (putting all humanitarian questions aside) TO PERMIT THESE UNFORTUNATES TO SECURE LEGITIMATELY THE MEDICINE WITHOUT WHICH THEY CANNOT MAINTAIN INTEGRITY OF MIND OR BODY? To effect that end, nothing would be necessary but to abrogate the illegal Code of the fanatics, and permit the LAW to function.

But this would involve the dissolution of the billion dollar drug racket; wherefore it is a culmination not to be attained without a desperate struggle. In 1936 there were 2,063 physicians and druggists

reported for alleged violation of the Blackmail Code (with 480 cases "compromised" on payment of $34,087.05 tribute; and 155 convicted in courts, with aggregate prison sentence of 297 years and total fines of $34,745.87), quite as if the N R A decision pronouncing such Codes Unconstitutional had never issued from the Supreme Court; and in further defiance of the A A A decision, which reiterated the truism that the Federal Government has no Constitutional power to regulate the practice of a profession.

Chapter XXVII

Manhandling the Law

THE attentive reader may recall that the really salient feature of the Harrison Law, (as quoted in detail in an earlier chapter) is the provision, in Section 2, that all transfers of narcotic drugs shall be made on written order, issued by the Collector of Internal Revenue, and signed by the registered purchaser, who is conventionally a manufacturer, wholesaler, or a retail druggist; it being specifically provided, as an exception to the section, that *the use of such order forms is not required of a physician in the dispensing or distribution of any of these drugs "to a patient in the course of his professional practice only."*

Coupled with that negative statement is the requirement that the physician shall keep a record of all prescriptions or distributions, except in case of patients upon whom he personally attends, for a period of two years, subject to inspection.

That is all. There is no other direct reference to physicians in the entire Harrison Act; and the two indirect references merely are complementary provisions, to the effect that druggists may accept the prescriptions of physicians in lieu of the official order forms of the Revenue Bureau.

As to the uses of narcotic drugs, the Harrison Law makes no hint or suggestion. Nor is there mention of narcotic addiction or any other malady or condition. You might read the law from beginning to end without gaining the slightest clue to the uses of narcotic drugs, beyond the implication that they must be medicines that physicians prescribe. Many a

lawyer has prated about the law, many a judge has exposited it, and many a juror has passed judgment on the handling of narcotics by physicians, without realizing that the narcotics in question include the most indispensable medicines in the physician's equipment—without which, medicine would be, in Ostler's phrase, a most unhappy calling.

The above brief but comprehensive analysis of the Harrison Act must be borne in mind, if you would realize the grotesqueness of the "interpretations" of the law that are to come to our attention as we proceed. Remember that the Law puts absolutely no restriction on a physician in administering narcotics to his patients in the course of his professional practice. His right to administer these or any other drugs comes from the State, not from the Federal Government; and Federal Law can no more restrict his use of narcotics in the practice of his profession than it can restrict the use of any other medicine.

As to the question whether a drug addict is a legitimate patient, should that question arise (as it soon did), there is no remotest reference in the law, nor could there be, without making the law itself unconstitutional. As to the latter point, we have the assurance of the Supreme Court. As to the former, we need but to read the law itself. After all, the words of the law are English; they are curiously simple and direct; there are no legal phrases or obscurations; no legal acumen is required to understand the one simple phrase which states merely that a physician need not use the order-forms of the Revenue Bureau in distributing narcotics to his patients in the course of his professional practice.

Please note that the phrase is negative. The law does not even presume to authorize the physician to use his own prescription blanks—because the makers of the law understood that Federal law can have no jurisdiction over this matter. Let it be repeated that only a State law can authorize any one

to practice medicine, or prescribe for patients, or do *anything* "in the course of professional practice." This the Supreme Court has most emphatically declared (Linder case; A A A decision). It follows that if we were to read into the phrase just cited from the Harrison Act the meaning that supervision is intended as to *whom* the physician may accept as a "patient," or *what* may be the character of "professional practice"—the law itself would be condemned as unconstitutional.

Let us not dwell on that point at the moment, however. Let us revert to the wording of the Harrison law, as cited, and re-emphasize the fact that the words are simple English, which any grammar-school pupil should clearly understand. Let us once more recall that there are *no* words in the statute that mention or suggest drug addicts or drug addiction. No word or phrase can be pointed out which the wildest flight of imagination could interpret as referring to or suggesting the existence of a person who is accustomed to the habitual use of narcotics or who has a "craving" or "appetite" for these drugs.

Does this reiteration of the statement that the Harrison Act makes no mention of addiction seem tiresome and needless? Tiresome it may be; but not needless. I must make sure that every reader clearly understands, and will remember, the point, in order that the amazing character of what is to be next related may be comprehended. Not otherwise could you get the import of the cases about to be cited—typical cases of manhandling of the law by Federal officials whose supposed function is the upholding of law.

The Federal Reporter records the finding of the Circuit Court of the 10th circuit, of August 23, 1934, in the appeal of Dr. Strader, of Oklahoma City, who had been convicted of violation of the Harrison Narcotic Act, from sentence pronounced by District Judge Edgar S. Vaught. In the reversing decision, the Circuit Court cites Judge Vaught's instructions to

the jury—instructions which the jury is bound to accept as the basic law governing their verdict. We are told that the judge, after refusing to let a physician answer a question about drug addiction (supposedly a medical topic), "observed that the statute (Harrison Act) prescribes the diseases for which morphine may be prescribed, that it expressly provides that merely being an addict is not a disease, and that the question was not one for medical testimony."

Again, we are told, a physician was allowed to answer a question as to whether he thought that pain would justify the use of morphine, but the judge interpolated the statement "that the jury would be instructed that the administration of morphine under such circumstances is prohibited by law; that the statute provides that it may not be given merely for relieving pain incident to the condition of addiction."

Here we listen to a Federal District Judge, telling us that *"the statute (a) prescribes the diseases for which morphine may be prescribed;" (b) expressly denies that addiction is a disease; and (c) forbids giving morphine to relieve pain due to addiction.*

"The statute prescribes"! A Federal judge makes the statements. But you, a mere onlooker, know that the statements are simply false—utterly mistaken, if we take the charitable view. The Appellate Court, speaking with judicial calm, said:

"We think the Court incorrectly stated the law."

They went on to say that the Court had also gone "an arrow-flight" beyond the proprieties in certain other of its instructions to the jury; notably in arguing that the stool pigeon whom the physician had treated could have no motive for testifying falsely (as to his condition when he went for treatment), whereas the physician, being on trial, might have great incentive to commit perjury.

After making these comments, the Appellate Court of course reversed the verdict, and sent the case back for re-trial. But even if the physician were vindicated in the end, it would be a travesty of language to say that all's well that ends well. The stigma of trial and conviction can never be erased. The mental strain can never be compensated. Nor is it quite without significance that the money spent can never be recovered.

And then, considering the case in larger relations, how small was the chance that the gruesome error of the trial court would ever be rectified. Of the scores (about 200 on the average) of precisely similar cases tried each year, only a negligible number ever reach the Appellate Court on appeal. Very few doctors thus victimized can afford the expense of further lawyers' fees, the printing of Transcript records that may run to hundreds of pages, and the loss of time involved in what is at best a doubtful venture. (Doubtful, because unless the trial judge has committed some such gross improprieties as those just listed, there is scant chance that the case will be reversed. The Strader case is one case among many in that regard—one among hundreds if you count all the cases in which physicians have been convicted on precisely the same grounds, but which have never been permitted to reach the upper court.)

Let me cite a more typical case—that of Dr. Thomas S. Manning, of St. Louis; detailed in the Federal Reporter for March, 1929 (Vol. 31, New Series, page 913). Here again we have a physician prescribing in what would normally be considered the course of his professional practice, for patients having, among other things, drug addiction disease. The indictment named no fewer than eighty counts (each count representing a prescription), and conviction was had on 29 counts. The judge divided the counts into two groups (for no explained reason), and pronounced sentence of 5 years each on 8 counts, to run concurrently, and five years each on 21 other

counts, to run concurrently, but consecutively as to the first period. Thus the sentence was for 145 years of imprisonment, reduced to 10 effective years.

Appeal was made from this sentence on the ground that the indictments (which were identical in substance) did not charge an offense against the United States, since there is nothing in the Harrison Act forbidding the physician to treat a patient; and that every factual charge of the indictment might be admitted (as, indeed, all facts were admitted), without implying any crime.

The indictment in question was the stereotyped document based in the main on the "Regulations" of the Narcotics authorities, with which we are familiar. The essence of the charge was that the person treated was not a legitimate patient, being a person who was not in need of treatment for any disease, and that he was not, in fact treated for any diseased condition.

The appellant argued that, aside from the matter of fact (it having been declared by the Supreme Court that the Harrison Act makes no mention of addiction, but that the addict is in reality a diseased person and proper subject for medical treatment), the Federal Government has no jurisdiction over the practice of a profession (also in Linder case, 1925), and that therefore the allegations do not come within the cognizance of Federal law. Ergo, no crime is charged in the indictment.

The Appellate Court did not, of course, dispute the force of the Supreme Court decisions. But they fell back on the observation that the specific charge is made in the indictment that the physician did not prescribe "in the course of his professional practice only." Here the actual words of the statute are used; and so, it was reasoned, a violation of the statute was *charged*. Whether or not the charge was true, was a matter on which

the Appellate Court was not asked to adjudicate; the function of that Court being to deal with questions of law, and the interpretations of law made in the lower court.

On this technical ground, the judgment of the lower court was affirmed, and the case was ended—for there was not one chance in a hundred that the Supreme Court would consider an appeal on writ of certiorari.

This case, I repeat, was typical. By and large, these narcotics cases are ended when the verdict of the petit jury has been accepted by the District judge, and judgment passed. Yet the trial may have been conducted from start to finish with entire disregard of the Harrison Law (which is alleged to have been violated); full dependence being placed on the illegal "Regulations," which read into the law things that not only are not there, but could not constitutionally be there, as we have elsewhere seen.

In conducting the case, the District judge may not only ignore the rulings of the Supreme Court about the inapplicability of the law to the regulation of the practice of medicine, but he may openly and wilfully misquote decisions of the Appellate Court (by which he is supposed to be bound) to influence the jury against the defendant.

Again let me cite an illustrative case. On August 6, 1925, the eighth Circuit Court rendered a decision in the case of Eckhart vs. the United States (Federal Reporter, 7, New Series, p. 257); the case being that of a druggist who had been convicted of filling prescriptions written by a registered physician. The point of the charge was that many prescriptions had been filled, and that the druggist did not investigate as to whether the recipients were drug addicts.

The Appellate Court, in reversing the verdict, ruled that the Harrison Act puts no such obligation on the druggist as that implied (making no reference to addicts). But from our

present standpoint, the most interesting part of the decision was this statement:

THE COURT: The law leaves entirely with the physician the responsibility as to when, under what conditions, and for what purposes he will issue a prescription for the drug [morphine].

Note, now, the use made of this ruling by a District judge in his instructions to the jury (in the Dr. Cary case, November, 1934, Los Angeles):

JUDGE HOLLZER: The Harrison Anti-Narcotic Act *does not leave* entirely with the physician the responsibility as to when, under what conditions, and for what purposes he will issue a prescription for narcotic drugs [morphine].

I have underscored the words which connote the departure from the original. It will be seen that they exactly reverse the authoritative decision. And this was no slip of the pen; for the negation is followed up with these words:

JUDGE HOLLZER (continuing): The Act places restrictions on his right to prescribe such drugs. The right of a physician to prescribe narcotics does not include a right to prescribe large quantities of them regularly and continuously to an addict not under restraint, simply for the purpose of keeping him comfortable by maintaining his customary use of narcotics.

Comment: You, dear reader, have been shown, above, every word of the Harrison Act that refers to physicians, and have been assured that there is no word in the Act that so much as mentions addicts, let alone expressing any mandate as to their treatment, whether under restraint or at liberty.

What, then, is your reaction to such statements as those just quoted? Would they not seem strange if they had been uttered offhand in casual conversation? What shall we say of them, when we reflect that they were uttered from the

Federal bench—read from written manuscript—and were addressed to a jury that held the professional life in its keeping?

To complete this particular story, it may be related that the same judge, after the jury had acquiesced and found the physician guilty, and a year's prison sentence had been imposed, violated a rule of the Supreme Court by permitting delay in the filing of the Bill of Exceptions on which Appeal was founded; with the result that the Appellate Court, after listening to the argument for reversal, and—it is believed—reaching a decision favorable to the physician, was obliged to heed the demurrer of the "Government," and regard the appeal as never officially having been received.

So the innocent physician had to go to prison because a Federal judge (in cooperation with a United States Attorney) ignored a ruling of the Supreme Court.

Of this culminating act, you may make your own appraisal.

EXPERT TESTIMONY AT A DISCOUNT

In a celebrated trial in a Federal court at Los Angeles (the effect of which was to close the Narcotics Clinic), seventeen physicians, first and last, took the witness stand.

The sole question at issue was, whether the physician had treated a certain patient in "good faith."

Unfortunately the defense counsel did not ask the Court to define good faith. If they had, there would have been nothing more to say—for no one could claim that the physician had attempted to injure the patient, when he gave him the only treatment that could maintain his sanity, or even his life. (The Government attorney admitted that the patient could not do without the drug for a day without becoming "a maniac." And in fact the patient died a few months later in a hospital because the physicians there dared not give him the same drug, which alone could have saved him.)

And since the question was not raised (nor the point made that the court had no jurisdiction when manner of practicing a profession was the sole issue), the Government was permitted to challenge the diagnosis, introduce medical testimony as to the dosage of morphine, the symptomatology of disease, the curability of addiction, the justifi-

ability of treating ambulatory addicts, and allied irrelevancies. And the defense counsel, following the trails of these red herrings, put on the witness stand one physician after another, to elucidate every *medical* aspect of the subject—instead of saying a few cogent words about its *legal* aspects.

The physicians were men of distinction. Their testimony was unanimous—the treatment given by the accused physician was proper, ethical, and in full accord with good medical usage. There was no testimony, even by prosecution witnesses, to the contrary.

And that, you might suppose, would settle the matter. Listen, then, to the presiding judge, in his instructions to the jury:

THE COURT: "Physicians have been permitted to testify as to the well recognized methods among the medical fraternity of treating the persons addicted to the use of narcotic drugs. You are instructed that it is competent for medical men to give in evidence their expert medical opinion touching matters within the range of the medical science with which they are familiar; *but such expert medical opinion and evidence is not binding upon the jury, and is received as advisory only.* The jury is therefore permitted to regard such evidence as advisory only, and reckon with it in the light and experience in human affairs, and *to accept it or reject it in whole or in part* as you may conclude the evidence warrants."

Comment: Please recall, in reading that extraordinary statement, that the matters in question were purely medical; matters concerning which a layman's "experience in human affairs" could have no conceivable bearing. Judge then for yourself, in the light of your own experience in human affairs, as to what may have been the animus back of the weird pronouncement.

Chapter XXVIII

The Power of a Fixed Idea

THE first medical witness had not been long on the stand in the Dr. Cary case before it was apparent that the Court entertained a peculiar idea about certain features of medical practice, or the duties of physicians. As the trial progressed, it was evident that this conception had attained the proportions of what the alienists term a "fixed idea."

It was an idea that dominated the Court; influenced decisions as to questions to be allowed or disallowed; motivated the questions propounded by the Court directly to witness after witness; and finally determined the complexion of the definitive charge that went to the jury, and effectively resulted in the conviction of two physicians who had infringed neither spirit nor letter of any law.

The idea was that there is something sacrosanct about the *dosage* of morphine; with the correlative ideas back of it that the physician who deals with a case complicated by the need of morphine must be perpetually on the alert to detect any symptom suggesting that the dose might be lessened; such obligation binding not merely the physician who prescribes for the patient, but also the consultant who examined him, for diagnostic purposes, before treatment began.

Now this conception, in the medical view, is simply naive, to state the matter in the most polite manner. The addict most directly concerned, and all the patients introduced as "similar cases" during the trial (that is to say, all the cases in any way under consideration during the trial) were addicts of many years' standing. No one of them was an addict of less than

ten or twelve years' habitual usage of morphine; others ranged from twenty to forty years of habitual usage. Every case had been competently diagnosed as having incurable pathology other than addiction—syphilis of the central nervous system; late stage tuberculosis; long-standing and most painful arthritis —with sundry complications.

Efforts were made in every case to keep the patient on the smallest dosage of morphine that would keep his or her system "in balance." Short of that, no treatment for the other pathology could have any efficacy. To attempt to reduce the dosage below this point would mean (a) utter failure of all treatment; (b) distress for the patient, instead of benefit; and (c) the possible implication that an attempt was being made to cure an ambulatory patient of drug addiction, which would not only be puerile and fatuous, but illegal under the State law, and in contradiction of the Code of the Federal Narcotics Bureau.

No patient received a prescription for narcotics except by coming in person to the prescriber's office, for examination and special treatment. Every patient was thus examined at intervals of a few days (usually twice a week); the only longer interval being the twelve-day period permitting Clark, in response to his plea of necessity, to enable him to keep his job (as elsewhere related). This exception, having been carefully engineered as a part of the Government's scheme of entrapment, could not well be advanced (even if the argument were otherwise valid) by any candid critic as proof that the physician did not examine his patients with adequate frequency.

Yet here was a layman with a fixed idea which, like fixed ideas in general, seemed beyond the reach of evidence or argument. The absolute necessity that Clark should receive at least ten grains of morphine a day was admitted by the prosecution. The incurable nature of his addiction was sufficiently

attested by the fact that he continued an addict though a Government employe in the narcotics service. The suggestion that any examination of him was necessary to determine anything having to do with his use of morphine, would have been regarded as absurd, not to say infantile. Yet the fixed idea would not down.

One physician after another explained on the witness stand that pathological addicts of this character can not be taken off the drug while at large, if at all; nor permanently cured of drug addiction disease, even if temporarily deprived by confinement. The "similar cases" were kept in jail, and brought to court under surveillance, not because they had committed any crime, but because it was recognized that they could not be trusted at large, but must be expected to return to the drug at the earliest opportunity. Yet this testimony and these object lessons seemed unavailing to make a dent in the fixed idea.

The evidence told of careful clinical examinations, checked in many cases by X-ray and laboratory tests. The physician who treated the cases patiently explained the methods of examination, and detailed some of the symptoms that jump to the eye of the trained diagnostician. The nature of response to treatment was described; symptoms that determined the character of further treatment were explicated; it was made clear that these patients were under careful and perpetually recurrent observation and examination. Yet to the victim of the fixed idea they remained as patients who had not been re-examined at all, but who most certainly should be examined, in the hope of finding it possible to reduce their dosage of morphine, and perhaps of being able to send them to institutions where they could be cured of drug addiction.

Physicians attempted to explain that no such institutions are available, except for a limited number of patients of affluence—whereas these patients were persons only one degree removed

from indigence. But nothing availed to change the tenor of the questions with which the Court continued to bombard the physicians, in what seemed a painful endeavor to gain comprehension of a medical situation that the fixed idea apparently denied entrance to his brain. Let me illustrate, from the official records.

"THE COURT: 'Now, then, . . . what is the customary practice with reference to further examination to determine the extent to which the administration of the drug is so required?' "

"THE COURT: 'Now, on the average, how frequently would these examinations be given?' "

"THE COURT: 'Now, what about the case of suspected tuberculosis? What sort of examinations or tests are made, assuming always you have a drug addict?' "

"THE COURT: 'In that type of addict, following the primary examination, is it customary to make additional examinations?' "

"THE COURT: 'Observations repeated on the average of about how long?' "

"THE COURT: 'Now, then, Doctor, by your last answer do you mean that it is customary for physicians in such cases to keep such frequent examination of the patient to ascertain as to what extent he can gradually reduce the quantity of the drug?' "

"THE COURT: 'Now, Doctor, that determination, namely to the extent to which a reduction is made in the quantity of the drug, is determined by what you call these fairly frequent examinations of the patient?' "

"THE COURT: 'By your last answer do you mean that it would be customary for the doctor to make examinations and tests to determine what such actions were likely to be?' "

"THE COURT: 'Now, then, Doctor, by your answer do you

mean that these examinations to which you have previously referred as being customary every three days or so should be eliminated?' "

"THE COURT: 'Does that include more than one examination of the patient?' "

"THE COURT: 'Now, you spoke some time ago about these examinations. Do the recurrent examinations play any part in the case of a drug addict whose first examination appears to indicate clinical syphilis of the central nervous system?' "

The eleven foregoing reiterations occur in the examination of a single physician, who, according to explicit statement of the prosecution, was not called to give expert testimony. And, as here presented, they are quoted sequentially from the jury-charge, in which the Court read them (together with the answers). The idea thus hammered home was the last thing in the minds of the jury as they went into deliberation.

Meantime the testimony of several physicians of equal standing, all concurring in the express declaration that the conduct of the defendant had been in all respects ethical and in accordance with the best medical practice, was utterly ignored. And the intent and purport of the testimony of the one physician singled out for exploitation before the jury, was obscured and made to appear condemnatory—in contravention of his intention and purpose.

That aspect of the matter has, however, been presented in another connection. For the moment, I wish merely to illustrate the power of a fixed idea, based on misconception of medical affairs lying beyond the scope of a layman's clear comprehension, to dominate a legal procedure, distort evidence, transform a judge into an advocate, and in large measure determine a jury decision which the advocate himself spontaneously pronounced (in an unguarded instant of surprise) a verdict of very doubtful legality.

MISQUOTING THE HIGHER COURT

Federal District judges, when acting in their usual capacity of trial judges, seldom if ever profess to interpret the essentials of a statute on their own responsibility. The official interpretation is made by the Supreme Court, or by the Circuit Court, which is, in effect, an appanage of the highest tribunal. In theory, a decision handed down from a Circuit Court is binding on all District courts, as the only valid interpretation of the law. (If Appellate courts conflict, the Supreme Court of course decides.)

Such is the theory. But in practice, District judges may on occasion take upon themselves the responsibility of overlooking, or for that matter negativing, a decision that runs counter to the view that the judge wishes to implant in the mind of the jury. An illustration previously presented will bear re-presentation.

CIRCUIT COURT, Eighth Circuit, in Eckhart case, August 6, 1925:

"The law leaves entirely with the physician the responsibility as to when, under what conditions, and for what purposes he will issue a prescription for the drug [morphine sulphate]."

DISTRICT COURT, Ninth District, in the Cary case, November 13, 1934:

"The Harrison Anti-Narcotic Act *does not leave* entirely to the physician the responsibility as to when, under what conditions, and for what purposes he will issue a prescription for narcotic drugs [morphine sulphate]."

Just what would be your appraisal of the *ethics* of a misquotation like that—with the liberty and professional life of an innocent physician at stake?

And, incidentally, on whom (in the opinion of the court) *does* the responsibility rest, since no one other than a physician can legally write a prescription at all, or otherwise dispense a single dose of any narcotic drug?

Chapter XXIX

Hobson's Choice

WHEN a physician is on trial in a Federal court for alleged violation of the Harrison Act, the presence of a jury is often a mere matter of form. Though *nominally* responsible for the verdict, the jury in fact serves only as a cat's paw for the "Government" officials—the United States Attorney and Federal District Judge. One proof of this is shown in the record of more than 95 per cent of convictions in these cases—a result quite out of step with records of jury trials of any and all other types of defendants.

This seems surprising, but is readily explicable. The explanation derives from the fact that the function of the jury in these cases is utterly different from that of juries in all other types of criminal cases. Elsewhere, the jury is supposed to determine a question of *fact:*—Did the defendant commit the act charged in the indictment? For example, a murder has been committed;—you cannot even find an indictment unless the corpus delicti is in evidence. Did *this* defendant commit that murder? Or a robbery has been done. Did *this* defendant commit the robbery? And so on down the scale—always with some definite infraction of law charged in the indictment; with no open question, in the vast majority of cases, except the identity of the delinquent.

But with the alleged violation of the Harrison Act by a physician, the case is entirely different. The open question is not a question of *fact,* but of *theory of the law.* There is no dispute whatever as to what the physician did. He wrote the

prescriptions, which are in evidence;—wrote them, dated them, signed them, and kept duplicate copies in his office for inspection. He delivered the originals to the persons for whom they were written, with the full expectation that they would be taken to a drug store, filled, and kept on file for inspection.

Everything being thus done in the open, the only debatable question would seem to be, whether the physician was legally entitled to write the prescriptions. He must have *thought* he was entitled to do so (unless he is an out and out imbecile). But now the indictment alleges that he had no such right; but, on the contrary, committed a felony each time he wrote a prescription.

And *nominally* the jury is asked to decide whether the act of writing each prescription was in fact a felonious act.

Obviously this is a large order for a group of laymen, whose knowledge of the laws governing the writing of prescriptions may be supposed to be rather cursory. Generally speaking, the writing of prescriptions would be supposed to be very much a part of a physician's business. On just what basis are we to decide whether the writing of these particular prescriptions was felonious?

One answer might be: Call in some physicians as experts, and let them enlighten us. Well, a dozen or so physicians *are* called in, and they babble by the hour about all manner of obscure medical topics—not one sentence in ten having any meaning at all for the harassed listeners. On the salient point about the prescriptions, they appear to be agreed:—it was quite in accordance with good medical practice that these prescriptions should have been issued.

That might seem to give something to go by. But, on the other hand, here are the representatives of the "Government" —forever reminding us that they are just that—clamorously pleading that the physician who wrote the prescriptions did not

act in good faith; that he had no legal right to do what he did. It is even urged that patriotism and good citizenship demand the stamping out of such acts of criminality as those here brought to light. If such guilt is allowed to go unpunished, heaven knows where the country will land.

And now that other representative of the Government, the august Court—ensconsed there on the high throne, with widespread emblem starred and striped on the wall at his back—takes a hand, and in sepulchral tones assures the jurors that this trial is "a solemn and decorous investigation by the Government [always the *Government,* you note], as to whether or not a particular crime has been committed by the accused." There follows an hour-long discourse, in which the jury is informed that it may *disregard all medical testimony* if it sees fit (there being no other testimony of any significance whatsoever); but that it must accept the *Law* precisely as the Court states it.

After which, the Court shapes the interpretation of the law to suit its own prejudices and preconceptions—with fine disregard of the obvious connotations of the statute itself and of the Supreme Court decision as to its meaning. To complete the demonstration, the Court may conclude (as in a specific case I have in mind) with a long series of quotations from *selected parts* of the testimony of one medical witness (testimony originally elicited by questions of the Court), giving tremendous emphasis to a casual view of obvious disadvantage to the defense; and finish without the slightest reference to the testimony of eight or ten other physicians of at least equal standing and authority.

The jury retires; sends presently for the transcript of (a) the testimony of this one physician and (b) the judge's harangue—and for no other item of testimony, of the 3,500 pages available.

And the verdict, of course, supports the Government;—though it would be a safe wager that no member of that jury had any clear-cut idea as to what the crime might be that was charged; nor any definite reason for finding the defendant guilty, other than obedience to the obvious wishes of the "Government," as vociferously presented by U. S. Attorney and Court.

In support of this appraisal, let me tell you what happened in a Federal court, where a physician was twice tried before the same judge for "crimes" that were absolutely identical in character—differing only as to the names of patients and the dates on which they were treated.

At the first trial, the physician was acquitted. It was agreed by judge and jury that what he had done was perfectly legal and in effect commendable. He had every reason to continue the treatments—and did so.

At the second trial (two years later), the physician was convicted, and the judge who before approved his action now sentenced him to seven years in the penitentiary and a fine of ten thousand dollars.

The discrepancy obviously calls for explanation. Fortunately I can supply the explanation. Here it is:

At the time of the first trial, the judge was a recent appointee, whom the narcotics authorities had apparently overlooked. He had not found out what is expected of Federal judges in these narcotics cases. So he merely read the Statute and the Supreme Court decisions, and instructed the jury in accordance with these findings. The jury, being thus informed that the physician had a perfect right to treat the patients as he had done, naturally decided that no crime had been committed, and said so.

But immediately there was great clamor from the champions of the dope peddler. From Washington came an emissary of

the Narcotics Bureau, who (as I am reliably informed), took the judge to task, and represented that such interpretations of the law as he had given (following the Supreme Court) were subversive of all the repressive work of the Bureau. Local "humanitarians"—perhaps unwittingly under influence of the dope ring—interviewed the judge with similar intent. Whatever other influences were brought to bear, I do not pretend to say. But the net result was to be evidenced when another stool-pigeon frame-up had brought the physician again to court.

Now the judicial atmosphere had changed. No longer was there simple interpretation of the Law. No longer was it evident that a physician has a right to treat his patients in accordance with his best professional judgment. It was indeed admitted that the Harrison Act is a tax measure, but the practical meaning of this was permitted to be obscured by misleading questions; and the general complexion of affairs so changed and obfuscated that the jury had no difficulty at all in catching the intonation of the "Government's" voice.

So now the acts that before had been legal, ethical, and commendable had become illegal, unethical, and felonious. Twelve hypodermic injections administered in the physician's office, and the (disputed) dispensation of one small dose of morphine, became thirteen felonies—each possibly punishable by a fine of $2,000 and five years' imprisonment;—aggregating $26,000 fine and 65 years' incarceration.

The judge, however (recalling, perhaps, that before he was "wised up" he had thought the physician's conduct unexceptionable), did not pronounce so severe a sentence. He cut the fine to a mere $10,000, and softened the prison sentence to one term of three years and two of four years—the latter to run concurrently, so that *the actual effective prison term was only seven years.*

A notable triumph of "justice," as interpreted by all true

friends of the Dope Ring. Incidentally, a minor illustration of the effect of the softening process referred to may be noted: Not long after the physician was in prison, the chief stool pigeon who had aided in his conviction (and who had been presented to the jury as "cured" in jail), was before the Court for having forged a prescription for narcotics; and was given a sentence of *one year and a day in a jail of his own selection.* Shortly afterward, another addict (who had not aided the "Government") was before the judge on precisely the same charge, and was given *two years in Leavenworth prison*—with the admonition that the sentence might have been five years, and would have been except that the addict had never committed a violent crime. (It is aside from the present point to note that opium addicts practically never *do* commit violent crimes—despite much puerile palaver to the contrary.)

The discrepancy between one year in jail and two years in the penitentiary for exactly the same crime is of no great moment (except to the party of the second part); but it is interesting to note that the combined sentences of the two prescription-forgers make less than half the term of imprisonment (overlooking the $10,000 fine) of the physician who, in the "unsoftened" view of the magistrate had committed no crime at all.

These, however, are complicating details. Our intent was merely to illustrate the power of a potentate on the Federal bench to dictate the verdict ostensibly rendered by a jury. It is that power, used in conjunction with the magic of the cognate governmental department, the office of the United States Attorney, which has determined the conviction of five thousand physicians, first and last, for *alleged* violation of the Harrison Special Tax Act.

Chapter XXX

Contempt of Supreme Court

"WE PAY no attention to the Linder decision."

Such was the brazen statement, from the witness chair, of a narcotics agent, representing the Government, at the trial of a physician at Seattle, in August, 1936. I mention the date, because the avowal is thus shown to have been made seven months after the Supreme Court, in the A A A decision, had shown that *they* pay a great deal of attention to that decision—inasmuch as it was quoted, and cited a second time with reiterated emphasis in the famous decision of January 6, 1936.

"The Federal Government cannot regulate the practice of a profession." That was the explicit statement of Justice Roberts, speaking for the Court. And the profession specifically concerned, in the decision of 1925 now reiterated, was medicine. And, as it chanced, the Linder case, specifically cited, was the case of a Seattle physician. It was only a coincidence, of course —yet serving to give an added touch of insolence—that the agent's disavowal should be made in the city from which the famous Linder case issued.

Doubtless similar comment had been made in many other Federal courts. For the matter of that, I have elsewhere recorded that an equivalent disavowal of the cogency of the Linder decision was once made to me, in person, in the presence of Assistant Attorney General Joseph Keenan, by a Mr. Fisher who was presented to me as the narcotics specialist of the Department of Justice. *That* disavowal, however, though absolutely unwarranted, as the sequel showed, could be in some

measure excused on the ground that the Linder decision was nine years old, antedating the existence of the present Bureau of Narcotics; coupled with the fact that it had been sedulously ignored by the narcotics authorities.

But soon afterward came the N R A decision, proving the illegality of the Narcotics Code; and then the A A A decision, with its specific authentication of the Linder ruling.

That a narcotics officer should blatantly put the Linder decision aside after that (and do so under oath, in an attempt to railroad an innocent physician to prison), may be taken to represent about the last word of contempt for decisions of the Supreme Court on the part of officials of the Narcotics Bureau.

The thumbed nose by way of salute for the "old men of the (nominally) Supreme Court." And the joke of the matter is that there is not a thing the said old men can do about it. Their actual authority is *Nil*. Were it otherwise, the Blackmail Code of the Narcotics Bureau would long since have ceased to pursue its unconstitutional devastating way.

The sponsors of the Code, which in its very existence flouts the Law, are naturally not concerned about the manhandling of any other law that chances to stand in their way. They prove that in every narcotics trial. At the particular trial now under discussion, a new illustration was given of the high regard in which the "Government" holds Federal statutes. Doubtless the idea originated with the narcotics authorities, but the expositor was the United States Attorney who prosecuted the physician.

The case offered complications that made the application of the usual formula of dubious value. In the first place, the physician administered the morphine in his office, by hypodermic injection. He could not, therefore, be accused of placing narcotics in the hands of a patient in excess quantities, to be bartered. Therefore no possible charge of "bad faith," in the

legal sense, could be entertained. As to medical good faith (with which, incidentally, the Federal law has no valid concern), he showed his belief that the patients needed the medicine by giving them doses that would have been lethal had the patients not been valid sufferers from addiction disease;—also, incidentally, by benefiting the patients.

In the second place, the physician had been tried once before, under an earlier indictment, for precisely the same *alleged* violation of the Harrison Law; and the Judge at that trial had ruled that any person who comes to a physician's office for treatment is a valid patient under the law, and that the physician has a right to treat drug addiction precisely as he treats any other disease. The jury had acquitted the physician.

It speaks volumes for the pertinacity (if less than paragraphs for the candor and honesty) of the narcotics authorities that a second indictment should have been brought, with carefully trained stool pigeons for witnesses, though what the physician had done was precisely what he had done before, and been declared by Judge and jury to be fully entitled to do. But, as I said, the prosecution now needed to think up some new type of skulduggery to overcome these handicaps.

The new deal offered included a trick card fashioned on or suggested by a provision of the Harrison Law itself—ignoring the Code for the moment. This is an essential clause of Section I of the Act, which states:

"That there shall be levied, assessed, collected, and paid upon (narcotic drugs) . . . an internal-revenue tax at the rate of 1 cent per ounce, and any fraction of an ounce in a package shall be taxed as an ounce, such tax to be paid by the *importer, manufacturer, producer, or compounder* thereof, and to be represented by appropriate stamps provided by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury; and the stamps herein provided shall be so affixed to the bottle or other container as to securely seal the stopper, covering, or wrapper thereof."

Now I submit that language could hardly be made to express an idea more explicitly, completely, and unequivocally than that. Even the split infinitive seems to justify itself. We are told what the tax is, who pays it, and how the evidence of payment is presented. When the package comes to the retail dealer (the druggist), it bears the stamp "securely" sealing the bottle or container; in proof that the last modicum of tax has been squeezed out of the commodity. No one for a moment contemplated any further tax to be paid by any one.

Moreover, as a matter of practical fact, during the twenty-one years the law had been in force, it is highly improbable that any one had ever been asked to pay a further tax, let alone actually paying it. When the package is opened, the seal is broken, and the commodity is dispensed to the ultimate consumer, usually in very small quantities. How would any one go about paying a tax on these fragmentary quantities, and to whom would it be paid?

Upward of sixty tons a year of opium and its derivatives have been distributed for twenty-one years, without that question ever having been raised—for the obvious reason that any one who can read simple English must see at a glance that the Harrison Law neither suggests nor contemplates such an absurdity.

But now comes forward a United States Attorney to brand himself either a sub-Moron or the other thing by regaling the ears of the jurors with a series of questions, propounded to one witness after another, as to whether they gave the physician a written order for the morphine that was injected into their arms, and whether to their knowledge a one-cent tax was paid by the physician for the morphine contained in each injection.

Funny? Of course it's funny, from your standpoint and mine. But what about the physician whom the "Government" has determined to "get" by foul means, no fair means being

available? Please consider that the jury knows nothing about the law. They merely learn now, that this physician failed to pay a tax which, the prosecutor clearly implies, must have been paid if the law had been complied with.

The chances are that the defense counsel, taken by surprise, will not have the wit to insist on having the words of the law read to the jury. He may not even look up the law himself. More than likely he will assume that the law does provide that no transfer of a narcotic drug shall be made without an order and the payment of a tax—overlooking the absurdity of such an exaction, with at least a hundred million prescriptions a year involved.

It probably will not occur to him to ask whether the victim of an automobile accident, pinned under the car, must write an order before a physician can give him a hypodermic to relieve his agony? And whether the physician, having given the hypodermic, must then hand out a cent to somebody—and if so, to whom?

And even if the questions are asked, and the true situation revealed (it being clearly noted that the physician is neither "importer, manufacturer, producer, nor compounder" of the drug), the fact remains that an impression has been made on the minds of the jurors that may not readily be effaced. It is by producing such impressions, and a general confusion of ideas, that convictions are obtained in 95 per cent of such trials;—and not by the presentation of valid evidence or the revelation of truth.

In a word, to speak bluntly, these trials are won by skulduggery. I know no better word for the method. And I affirm, with a sense of humiliation, that no sincere and honest person who sits through an average trial of this sort in a Federal court, with full knowledge and understanding of what is going on, can ever again have confidence in the integrity of the Depart-

ment of Justice, as represented by the minions who are officially entitled to speak of themselves as the "Government."

As I have said before, the very name Government in the mouths of men who would resort to such trickery as I have just illustrated is an offense and a profanation. That such men are empowered to scoff at law, and thumb their noses at the august tribunal of the Supreme Bench is a reproach to our judicial system.

Chapter XXXI

The Solicitor General Does His Bit

I CHANCE to have first-hand personal knowledge of three interesting cases that made their way to the *threshold* of the domain of the Supreme Court during the year 1937. What I mean is that these cases were appealed from decisions of Appellate Courts, on petition for writ of certiorari, and thus came under the eye of the Solicitor General of the United States —who presented them to the Supreme Court in such wise that they were denied further hearing. Yet, I affirm with great confidence that, had the members of the Supreme Court known what I know about these cases, they would not only have granted the writ, but, after the hearings, would have reversed the lower-court decision in each instance.

In saying this, I do not mean to imply any criticism of the Solicitor General, whose partisan presentation thus resulted in what I conceive to be the negation of justice. It is the business of a Solicitor General to make partisan presentation of every case that comes before him. An Appeal from the verdict of a lower court is, in effect (and in name) a suit in which the United States is the defendant. The Solicitor General is that defendant's attorney. The charge, in effect, is that the United States (through action of its official representatives in a lower court) has won an unjust or unfair decision. The Solicitor, like any other defense attorney, must deny this charge, and attempt to sustain the denial.

In practical terms, this means that he must answer the arguments on which the Appeal is based. These arguments must,

in theory, refer to matters of legal procedure—not to matters of fact in evidence. In other words, it is no valid part of the Appeal to attempt proof of the appellant's innocence of the charge of which he was convicted. The point at issue must solely concern the technicalities of court procedure or a question of constitutional law. And, by the same token, the Solicitor General's response should be concerned with these matters only.

But it often happens, here as elsewhere in this practical world, that theory and actuality diverge rather widely. And so we may find that the Appeal makes mention of factual matters having no legal bearings; and that the persons who prepare the reply for the Solicitor General have presented evidential matters far afield from any legitimate question for Supreme Court consideration. Which after all is only to say that the officials concerned in these affairs are human beings, with ordinary human prejudices and preconceptions.

Such being the case, however, it is not without interest to ask just who the "persons" referred to are, and what is the nature of their prejudices and preconceptions, when narcotics cases are in question. Such an inquiry does not directly involve the Solicitor General himself; for it goes without saying that this official, having to do with a multitude of cases on every conceivable subject, must depend on "experts" in various fields to prepare the defense documents that he subsequently sponsors before the Supreme Court.

The "experts" in question are, as a matter of course, employes of the Department of Justice. I chance to have had personal contact with one of these "experts" in the office of the Attorney General of the United States. And I was by him assured, in the presence of Assistant Attorney General Joseph B. Keenan, that the Linder decision of the Supreme Court (which denied Federal control over the practice of medicine) had been rescinded by later decisions.

As a matter of fact, the Linder decision not only had not been rescinded, but it had been several times re-affirmed; and a few months later was to be again affirmed in precise and emphatic terms, in the course of the famous A A A decision, where it was twice cited, quoted verbatim as to its essential tenet, and stated as basic law.

I stress these details because the fanatic who thus mis-stated the law, and denied its salient content in 1934, was still in the same position of trust, supposedly interpreting the law for the Solicitor General, in 1937, when the cases about which I am writing came up for consideration. The leopard does not change his spots. I have evidence that the same spirit that actuated the fanatic in 1934 dominated him in 1937, and led to such presentation of the evidential facts of one of the three cases as had no proper place in the document that went to the Supreme Court—facts that were not properly adverse to the appellant, but which could be made to take on an inculpatory complexion.

Let me elucidate. The conviction from which the physician appealed involved the "crime" of administering morphine by hypodermic injection to patients in his office. Appellant claimed that there could be no possibility of defrauding the Government of taxes, since the patient could not dispose of medicine that was in his blood stream. Nevertheless, the Appellate Court (in one of the weirdest decisions ever rendered) had declared that the Government *had* been defrauded of such tax. *That* decision was the matter now challenged, a simple, tangible, question of interpretation of a tax law.

But the question that came to the Supreme Court, via the "expert" of the Department of Justice, had no such simplicity. Interpreted by the fanatic, the entire complexion of the case was changed. And it was a foregone conclusion that the Supreme Court, casually scanning this case along with hun-

dreds of others, would toss it aside without discovering that, amidst the verbiage, a constitutional question was concealed.

Had the smoke-screen verbiage been omitted, it would have been clear that this was a case where a circuit court of appeals had "decided a federal question in a way probably in conflict with a decision of the Supreme Court" (in the words of Chief Justice Hughes), and, therefore, a case where granting of the writ of certiorari would be fully justified. There is little doubt as to what the final decision would have been, had this been granted, and the case thus brought, in due course, before the Court in open session.

Thus it appears that, the machinery of Appeal being what it is, the function of decision is in actuality usurped by a minor official of the Department of Justice—with the more or less conscious cooperation of the Solicitor General of the United States; the Supreme Court scarcely participating except in rubber-stamp capacity.

What happened in this case may be taken as typical not alone of the two other cases of 1937, but of a score of earlier cases. *Not since 1926 has a single case of a physician convicted of violation of the Harrison Act gained a hearing before the Supreme Court.* Even the few that gained the threshhold of the Court on petition for writ of certiorari found that last barrier of the fanatics (*ipso facto* members of the dope ring, whatever their intention) impassable.

Thus is justice flouted by fanaticism in the political bureau known as the Department of Justice.

CHAPTER XXXII

Marihuana—New Opportunity for the Racketeer

THE N R A and A A A decisions left little doubt in the minds of competent observers that the Harrison Law, in its application to physicians, will be declared unconstitutional when the matter is first put to a test—as it will be in the near future. Therefore it behooved the racketeers to cast about for a new coigne of vantage. It occurred to some one that an old familiar drug recently given publicity under a new name might serve the purpose. This drug is known to the medical profession as Cannabis Indica. The new name, adopted from Mexico, is Marihuana (Spanish *Marijuana*).

If there had been any sincere belief that this substance constitutes or might become a menace to public health or morals, nothing would have been simpler than to ask for an amendment to the Harrison Act, in which the name Cannabis, or Marihuana would be added to the names opium and cocoa. But this would by no means have served the desired purpose, because, in the first instance, cannabis, unlike opium, is not a drug of great significance (seldom being prescribed by physicians), and, secondly (and to the purpose), the rescinding of the Harrison Act would involve cannabis as well, and thus nip the prospective marihuana racket in the bud.

(This is no mere conjecture. The proponents of the Marihuana bill presently introduced, in discussions before the Congressional Committee of the Judiciary, stated that one reason

why it was desirable to have a new law was precisely that the constitutionality of the Harrison Act might be challenged, and that the proposal to amend that act by introducing marihuana might bring matters to a climax.)

So a Marihuana Tax bill was introduced, and presently enacted as Federal law. And the foundation was thus laid for a racket that should quite eclipse even the billion-dollar illicit drug industry that the Harrison Act (as misinterpreted) developed and fostered. For the new drug has qualities that put it in a class by itself.

For example: Marihuana, despite its high-sounding name, is merely a product of the familiar hemp plant—an agricultural product to which (according to statements made before the Congressional committee) upward of 10,000 acres of land in the United States are devoted. Leaves and flowers of any of these plants supply material for the marihuana cigarettes which, we are asked to believe, are a menace to American youth today.

But that is only the beginning. The hemp plant is not only cultivated extensively, but it grows wild in countless fields, neglected gardens, fence corners, and back yards. And the new law, enacted in 1937, permits its cultivation anywhere and by anyone who cares to pay a one-dollar tax for the privilege. In addition to this, it appears that upward of 23,000 tons of seeds of the plant are imported annually; and it was testified that these carry a modicum of the resin that contains the allegedly obnoxious marihuana.

It was naively (?) suggested that importers of seed intended for making oil, etc. should be required to "sterilize" it by heating—which would interfere in nowise with the marihuana-quality of the tons of material.

In a word, then, here is opportunity that should reconcile the racketeers to the loss of the billions that will no longer be available from narcotics after the Harrison Act is rescinded and

the drug addict is thus rescued from their clutches. To be sure, the medical and pharmaceutical professions cannot be largely used as stalking horses, because doctors do not prescribe cannabis and druggists use it only in a few proprietary nostroms (corn medicines, for instance), from which it can readily be omitted. But with the aid of newspaper propaganda, already started, an interest will be created in the alleged allurements of marihuana-smoking; and the army of inspectors sent out to explore the millions of fields on which the weed may grow need

only apply, with slight modifications, the methods learned in the conduct of the narcotics racket, in order to develop a marihuana industry that should eclipse the billion-dollar illicit narcotics racket of today.

Racketeers who developed a billion-dollar illicit drug industry, using opium that had to be smuggled into the country, should have no difficulty at all in developing a five-billion dollar racket with marihuana—provided only that the *press can be induced to stimulate curiosity by giving the drug publicity.*

Already a good beginning has been made. A recent magazine article conveyed the impression that marihuana is rampant as a chief promotor of sex crimes; it being noted in particular that several hideous crimes committed in Los Angeles were instigated by use of this drug.

On the basis of these claims, a representative of the White Cross Association on Drug Addictions took occasion, during his recent investigation of narcotic conditions in Los Angeles, to make inquiry about the prevalence of this alleged new menace. A single statistical item will adequately sum up his findings: During the month of August, 1937 (just prior to the investigation), police records of Los Angeles told of the arrest of 20,824 persons. Among these, just *two persons* were named as being in possession of marihuana—though no suggestion was made that this drug had any connection with any crime with which they were associated.

During the same month there were not far from one hundred automobile deaths in Los Angeles, a large percentage due to drunken drivers. Incidentally, there were just 6 arrests of narcotic addicts during the month, for violation of narcotic laws. During the fiscal year there had been 100,560 arrests, including 834 on narcotics charges, about one-third of these being addicts, whose crimes seldom attained the dignity of anything more formidable than petty larceny. During the past five years, with

total arrests never lower than 89,909 (and three times above 100,000), the average narcotics arrests were 799—including peddlers and smugglers as well as addicts.

Browse a little on these typical figures; and when next you hear the narcotics addict (or the marihuana smoker) named as a "major criminal," permit yourself the indulgence of a quiet laugh, remembering meantime that you, if the head of a family, are being taxed about $80 a year because the "major criminal" fiction is kept up, and the billion-dollar dope racket thereby given countenance.

BOOK V

From Star Chamber to Court of Justice

Chapter XXXIII

Star Chamber

I HOPE I have made clear the opinion that the "trials" of physicians in Federal courts for alleged violation of the Harrison Act are not trials at all, in the great majority of cases, in any proper sense of the word. They are Star Chamber proceedings, in which the men who call themselves the "Government" go out to "get" their man by fair means or foul—seldom confining themselves to the former.

The name "Government" in the mouths of these men is kin to blasphemy. But the word is ever on their Pharisaical tongues. They make such use of it that one's gorge rises as one listens.

I wish to make this matter unequivocally clear. These "trials," I say, are not trials by law. They are star-chamber persecutions by illegal, unconstitutional Code at the outset, supplemented by trickery, false innuendo, and not infrequently by perjury or the subornation of perjury. The attorneys who conduct the "trial" are perfectly aware what they are doing. The judge is either aware of what is happening or else he is an ignoramus who has no proper place on the bench.

The attorney is permitted to strive to make the accused physician a trafficker in drugs.

Both attorney and judge are perfectly aware that there are scores of actual traffickers in the same drugs (dope peddlers) within pistol shot of the courtroom, whom no one attempts to intercept.

Both are aware that, even if everything charged against the physician were true, he has done nothing but compete, on an insignificant scale, with the dope peddler whom they ignore.

But in the vast majority of cases the charge cuts deeper than that. Attorney and court are aware that the physician was *not* a trafficker in drugs. They are aware that they are prosecuting an honest, sincere, conscientious practitioner of medicine, who has done nothing illegal or unethical—nor even violated the tenets of the Narcotics Code.

The United States Attorney who pressed the suit vindictively against the Clinic physicians referred to in earlier chapters of this book (the suit for closure of the Narcotics Clinic, that the patients might be restored to the dope peddler) personally assured a friend of mine that he knew the "history of the chief clinic physician from A to Z, and had nothing but admiration for him." He repeated the statement, in substance, on different occasions, to two other friends of mine—the three persons who give me this assurance being personally unknown to one another.

What reason did the Government prosecutor give for vindictively pressing a suit that on its face was ridiculous? He had one answer for all inquiries:

"Pressure from Washington."

Pressure from Washington. That is the story. Pressure that involved procedures which, as I have elsewhere shown in detail, are at least close to the line of malfeasance in office, and far over the line of sincerity, candor, or honor.

Why is such pressure exerted? For answer, turn back to almost any chapter of this book. Or rather, recall the import of the presentation, and read on here as I present a tabloid recapitulation—before going forward.

Recall, then, that the Harrison Act, the only law involved, is crystal clear in its application to the professional activities of the physician. It demands simply that the physician who would handle narcotic drugs (the most essential drugs in the Pharmacopœia) shall register annually, and keep a record of

narcotics transactions. It is casually mentioned that he uses the drugs in the "legitimate" practice of his profession, in dealing with his "patients."

In the court of Judge Bowen, of Seattle, the word "patient" was defined, as we shall see, as "one who applies to a physician for the alleviation of pain or distress." But the world had waited twenty long years for that simple, common-sense interpretation. Had that definition been given in the Harrison Act itself, the entire history of court procedure in hundreds of cases would have been different from what it has been.

Unfortunately, no definition was given; and the star-chamber "trials" we are considering have been conducted on the assumption that it is the business of judge and jury to distort the plain meaning of words at will, declaring, in effect, that a person who applies in dire distress to a physician, and receives treatment that alleviates his distress, is not a patient within the meaning of the law, unless a narcotics agent (a layman, of course) so decides.

The physician may have thought he was treating a patient. But the narcotics agent declares that the treatment given, even though it benefited the sufferer, was no proper treatment, but a felony.

And the United States Attorney undertakes to sustain that view of the matter.

Let me once more repeat that the ensuing procedure, at every stage, is sheer hypocrisy. If you analyze the volleys of testimony that are presented to befog the minds of the jury, you will find that it is never expressly claimed that any act of the physician, considered in itself, violates any law. It is not denied that the physician may properly treat, in any way he sees fit, any valid patient that comes to him. It is not claimed that the physician must make a correct diagnosis; nor that he must be successful in his treatment.

These questions, to be sure, are debated at great length before the jury, with introduction of medical experts aplenty. But this is only for camouflage effect. Such testimony has no direct pertinence. It is not claimed to be pertinent, except for an ulterior purpose. It is never denied that the doctor is sole judge of the patient's condition or disease; the sole arbiter of drug and dosage; the exclusive decider of any and every medical question. It is not claimed, even, that the Harrison Law puts any restriction on the treatment of drug addiction, in an ambulatory patient, in any dosage that may be required.

What, then, conceivably, is claimed? On what basis is it alleged that the physician has feloniously evaded the Harrison Law?

The answer, in last analysis, is always the same (though by no means always is the answer made known to the jury).

The answer is this: The physician is alleged to have acted feloniously, because it is asserted that he did not treat the patient in *good faith.* It is asserted that the physician did not conscientiously believe that the patient needed the medicine given, in the dose administered, to relieve actual pain or distress or in any way to benefit him. In the last analysis, that is the only charge. The attempt to prove that the physician's acts were not "in accord with good medical usage" is merely to sustain the charge of "bad faith." No one pretends that there is any fixed standard of "good medical practice" that can be applied to any and every case.

The principle that *can* be applied, is the elemental principle of the exercise of "good faith" in dealing with the patient.

In dealing with this pair of words, juridical trickery reaches its apogee. There is of course nothing in the Harrison Act about good faith. There could be no attempt, under that law, to estimate the nature of the physician's motives, in the ordinary sense of the word, in dealing with his patients. No Federal law

has any control or jurisdiction over matters of professional action between physician and patient. (But the jury will never find this out.)

What the Harrison Act could demand is that the physician, in handling narcotics, acts *as* a physician;—that he is dealing with a valid patient. If, for example, the physician wrote a prescription calling for ten grains of morphine a day, to be taken by a patient who was known to the physician *not* to be a drug addict, *that* would be a clear violation of the law, because no person not an addict could take such doses and live. The inference would be that the physician designed that the patient should barter the drug. He would thus become party to an illicit sale. In other words, he would be a trafficker—and not a physician at all in any proper sense of the word.

We have seen that this is precisely the thing that the prosecutor attempts to establish, by ways devious and deceitful; and that he usually succeeds, through confusing in the minds of the jury this legal "bad faith" with the idea of bad faith in its ordinary sense. The reason why the prosecutor must use hypocritical methods is simply that he is perfectly aware that the physician did not show bad faith in either sense; but aware also that good faith, in the medical sense, is something that is fairly beyond the domain of proof.

How shall you evaluate a physician's motive in a given line of treatment? By the result? But that cannot be; because it is expressly admitted that intentions may be excellent and results deplorable. How then? By proving, perhaps, that the doctor gave medicine to a patient who did not need the medicine? But this patient *did* need the medicine. He was an addict, who could not get along, and remain sane, without the medicine. What then? Well, the physician gave him *more* of the medicine than he needed—more than he would personally use.

And the proof of that? Well, of course there is no proof, be-

cause it isn't true. The physician gave only the dose that the patient admits having taken habitually, day by day, for the past twenty years. Are we then at an impasse? Not at all. We (the prosecution) will simply leave the actual issue out of consideration, and begin to introduce a series of witnesses to deal with any and every irrelevant aspect of drug addiction and other diseases. We will prove that the usual dose of morphine for *normal* people is one-eighth of a grain, instead of the ten grains given this (abnormal) patient. We will not even admit, for that matter, that only ten grains were given this patient. We will deal with the aggregate prescriptions, over a term of weeks, and muddle the computations until no one can tell what was given—the jury by this time forgetting the import of the original testimony of the patient himself.

We need not repeat the rest of the story. You have heard it in some detail in earlier chapters. The import of it is that in something over 95 cases in a hundred, the ultimate effect is to confuse the jury absolutely (and the defending counsel and—sometimes the judge no less), so that it is decided that the physician did show bad faith (a felonious matter), though the clear testimony, if it could be exhumed, shows that he gave the patient, in the best of faith, the smallest dose of morphine on which the patient could subsist, to the marked benefit and satisfaction of the patient himself.

And the Prosecutor, you may be sure, receives high commendation "from Washington," over the victory in which he thus made the worse appear the better part—and put the brand of felon on an innocent, upright, and honorable physician.

That *may* be the prosecutor's only reward. But he is always open to the *suspicion* of receiving a more tangible tribute from the person directly benefited—the Dope Peddler.

Chapter XXXIV

Dubious Ethics

IN A recent narcotics case in a Federal court, with a physician under the usual type of indictment, the Judge stated, in his final charge acquitting the defendant, that he would have felt justified in dismissing the case at the end of the prosecution's case, had it not been that two physicians, posing as expert witnesses, had testified that they did not consider the narcotic treatment of the patients named to be justifiable. They, the experts, would not treat an ambulatory addict under any consideration.

This view was much more than counteracted, in the opinion of the judge, by the testimony of other experts, who in due course declared the treatment to have been not only justifiable but admirable—one of the experts citing the Hippocratic oath in substantiation of the statement that a physician who refused to give aid to an afflicted person who appealed to him was unworthy of his profession. So the matter came out right in the end (unlike most such trials), but our point of the moment concerns, not the result, but the method involved. Specifically, the question of medical testimony, introduced by the Government, in the attempt (usually successful) to convict physicians who are charged with violation of the Harrison Law.

Let us briefly review the conditions. A regularly qualified and properly registered physician is accused of treating a patient improperly. Not to the detriment of the patient, nor to the dissatisfaction of the patient; quite the contrary. The narcotics he administered enabled the patient to go about the

normal duties of the day, in comfort, as he could not have done without the drug. There is no dispute as to that point. But the Government claims that the physician had no right to aid the patient in that way. It claims that no addict patient, while at large, may legally be treated with narcotics in quantity or manner to "comfort his addiction"—that is to say, to make him tolerably comfortable, and enable him to conduct himself normally.

It seems a strange contention (and as we know, the law does not sustain any such thesis), but the Government upholds it none the less, and brings forward alleged expert physicians to sustain the claim. There are commonly two such "experts" called, as in the case just mentioned. Very commonly, also, in a large community, the same "experts" are called in successive narcotics cases, constituting the mainstay of the prosecution.

Just what are these medical witnesses asked to prove?

Well, of course they do not *prove* anything, except, perhaps, that there are certain lacunæ in their moral makeup. What they testify to, is that *they* would not treat an ambulatory addict. They believe that addicts should be treated only in institutions. They themselves never treat an ambulatory addict. No, indeed.

Now if you, dear reader, are not familiar with the methods of procedure in Federal courts, you may guilelessly suppose that, if it chances to be true that the "expert" witness never treats any human patients at all, but is solely concerned with laboratory experiments on rats and mice, this fact might be readily brought to the attention of the jury.

Guess again, dear reader. In all probability the jury will never learn that this physician is not a practicing doctor, nor that he is utterly incompetent to deal with a human patient of any type.

Nor will they be made clearly to understand that, whereas there are perhaps four thousand addicts in the community,

there are not fifty beds available in any institution to which they could be sent.

Nor, again, will they grasp the idea that these addicts are mostly persons who, if permitted to secure the drug they need, are normal-seeming individuals, suffering no more in body, mind, or morals from the use of morphine than the average tobacco user suffers from the use of cigarettes.

Yet again, it will never be clear to the jury that the particular patients treated by the physician under indictment, suffered from incurable maladies other than addiction, and can never by any possibility be cured permanently of their addiction.

In a word, the jury will never suspect that the only rational thing to do with these patients is to enable them to secure day by day the modicum of morphine they need, at the least possible expense, while receiving whatever other treatment may be required.

And the main reason why these simple truths cannot be brought to the knowledge and understanding of the jurors is that the "expert" physicians called by the prosecution will doggedly express the opinion that "no ambulatory addict should be treated with narcotics."

In expressing this opinion, which must seem senseless to anyone who at all comprehends the conditions, as just outlined, the "expert" is not merely making a statement of a personal view, which might be permissible enough, however fatuous, at a medical meeting or even before a general audience. He is, in effect, doing his utmost to condemn a fellow physician as a felon—pronouncing a colleague, often far outranking him in position and ability, a law-breaking trafficker, because that colleague's view differed from his own on a controversial medical topic.

That would be bad enough, in all conscience, if the "expert" acted from conviction, and with stupid honesty. But when it

happens, as in cases I could name, that the element of personal spite enters—the "expert" paying off an ancient grudge by endeavoring to send his colleague to prison, the exhibition enters another category.

It is physicians of that type that I have been known to name, in public addresses, as "yellow dogs of the medical profession." For the moment, I refrain from mentioning names and citing cases. But I may not always be so reticent.

Chapter XXXV

Three Recent Episodes

HERE are two typical episodes, and one that is highly atypical. The two typicals concern the *conviction* of physicians for alleged violation of the Harrison Narcotic Law. The third episode is atypical simply because it concerns the *acquital* of a physician whose case was otherwise just like the others.

In all three cases, the charge, of course, was the administration of morphine to patients that were drug-addict stool pigeons. The usual hokus pocus of alleged cure of addicts in jail was introduced; and the conventional claim that the patients were not suffering from any disease (though admitted to have *addiction,* which the Supreme Court names as a disease subject to medical treatment).

There is no valid reason for bringing up either of these matters in court; for the Harrison Act says nothing whatever about addiction, nor any other disease; let alone the curability of any disease. But these matters, introduced solely under aegis of the unconstitutional "Regulations" (Blackmail Code) of the Narcotics Bureau, are the stock in trade of the "Government" in prosecuting physicians. No other tricks so surely fool the jury.

In the two typical cases now under consideration, the two tricks were used effectively—as in 95 per cent of all such cases. The jury accepted the faked evidence of cured addicts (seeming to prove that the doctors did not try to cure them), and the testimony of Government witnesses to the effect that the patients had no maladies other than addiction. They accepted (how should they know better?) the false statements or in-

sinuations of prosecution and Court to the effect that the physicians could not legally treat the addicts unless they had "other pathology."

And so, being thus deceived as to vital issues, they perhaps not unnaturally found the physicians guilty.

All this was strictly typical, as I said. And the sequels, which furnish my excuse for this sketch, are equally typical, but for that very reason the more worth recording. First, as to the matter of the "cured" addicts. Of course they are never cured, but only taken off the drug in jail and kept off so long as they are kept in jail. But it is not always easy to follow the cases after they are released, to prove that they are back on the drug.

In the first of the typical cases before us, however, the careers of four "cured" witnesses were made public in short order. Because they had acted as stool pigeons, they could not readily get their drugs from peddlers, who now distrusted them. So one of them applied to the local health officer, begging to be given morphine. A second appealed to the custodian of the State Narcotics Farm, asking to be taken in for narcotics treatment. And the two others (man and wife) were forced to forge prescriptions, to meet their morphine needs, and were arrested and jailed for so doing. Beyond that, one of the four confessed that he had helped "frame" the physician by producing a bottle of morphine solution falsely alleged to have been received from the physician.

Meantime the physician who was convicted by this framed and falsified evidence and testimony is serving a seven-year sentence in a Federal prison (with an added fine of $9,000)—though innocent of any crime or dereliction.

In the second of the typical cases, the most important witness was a patient who, according to the claim of the accused physician, had pulmonary tuberculosis, of severe and advanced type. Since this is a malady that brings its victim within the exemp-

tion clause of the "Regulations" that do service for law, it was necessary for the "Government" to refute this claim. So a jail physician, a prison physician, and two other official employees (including a prison guard) were put on the stand to testify that the patient showed no symptoms of this malady, but was, on the contrary, in perfect health while under their supervision.

This testimony naturally impressed the jury, proving to their satisfaction that the physician had made a "phoney" diagnosis in the attempt to cover his malfeasance in treating an addict unjustifiably (the Government of course making the usual false claim, in defiance of the ruling of the Supreme Court, that mere addiction is not a treatable malady).

So the jury found the physician guilty. And it was not till several weeks later that the patient *died in a hospital of chronic pulmonary tuberculosis* (death-certificate record), his death being hastened, no doubt, by lack of morphine—since no physician had dared to treat him.

That death certificate is a pleasing commentary on the testimony of the two physicians who did their effective best to swear an innocent colleague into the penitentiary. There are some very fine men in the medical profession.

Now a few words about our third case—the atypical one. The interest here lies in the anomaly of acquittal. In particular, I wish to record the reason for the unusual denouement. *Why* did a jury that had the usual type of falsified testimony before it, depart from tradition and give a rational answer? Fortunately, I have the statement of the foreman of the jury as to just why this occurred.

It came about, not through consideration of the evidence as a whole (which had led the jury to an adverse attitude), but from the force of a single consideration, forcefully presented by the defense counsel, Mr. Gordon Lawson. A very simple matter, but a master stroke, as the result proved.

With masterly strategy, Mr. Lawson sat composedly listening while the Government prosecutor mis-stated the Law, and while the Court relayed the mis-statement (to the effect that the Harrison Act does not permit a physician to treat an addict having no "other pathology," and the allied Code-engendered sophistries) in the Instructions to the jury. Then, when counsel were asked, as is the custom, to point out any modifications or additional instructions they would wish to have introduced or emphasized, Mr. Lawson sprang his surprise.

"Your Honor," he said, "I have only one suggestion. I ask you to charge the jury that the final issue here is the question of whether my client acted in good faith in his dealing with this patient. That, indeed, has already been stated. But now I ask you to define 'good faith.' I ask you to charge that good faith, on the part of a physician, consists solely and exclusively in the intent, on the part of the physician, *to benefit his patient.* If my client tried to *injure* the patient, he showed bad faith and is guilty. If he tried to benefit the patient, he showed good faith, and is innocent."

The judge, taken by surprise, acquiesced, and gave this final admonition to the jury—thus, probably for the first time in the history of many hundreds of similar cases, presenting a definition of "good faith" that any one can understand and that no one can dispute.

The jury, with that definition of good faith in their ears as the final message of the Court, virtually forgot all antecedent testimony and argument. Five minutes' discussion proved them agreed that the physician certainly had not designed to injure the patient when he prescribed the only medicine that could keep the patient alive and sane. (It was in evidence that this patient had subsequently *died for lack of morphine* in a Boston hospital. It was also effectively in evidence that the Government, employing the patient as a stool pigeon, supplied

him morphine day by day in lieu of that prescribed by the physician.) Obviously, then, the physician had intended to benefit the patient, when he prescribed the all-essential medicine—the only medicine that could benefit him.

So all the obfuscations of the testimony cleared away. The evidence as a whole, along with argument and legal quibblings, could be set aside and forgotten. The clean-cut issue of good faith, simply and logically defined, was all that need be considered. And as to that, there was no possible chance for difference of opinion. The Government had not even suggested that the physician had any design to injure the patient. The medicine prescribed, far from being injurious, was life-saving. Ergo, good faith—the only issue—had been demonstrated to the hilt.

Quickly the jury returned to court, with the verdict of "not guilty." Home-spun logic had saved the day, where direct challenge of the mis-statements of the Prosecution would have been meaningless to the jury, and utterly futile.

Now a concluding word. Of the three trials here summarized, one took place in Seattle, Washington; the second, in Atlanta, Georgia; the third, in Los Angeles, California. The fact of identity of plan of action illustrates the universality of the stereotyped method originated and generaled in Washington. The two typical cases illustrate the helplessness of local attorneys (necessarily unpracticed in such cases) when pitted against Government officials who have the benefit of the experience of hundreds of cases, relayed from Washington, and who need only follow routine in order to put the defense entirely at their mercy.

The third episode, on the other hand, shows that the Government strategy is not invincible. In this case it was foiled by a simple stratagem, which might be expected to work in allied cases. After all, we may not suppose that the average jury

wishes to be a party to gross injustice. It is the business of the Government prosecutor to win his case, by fair means or foul; and the Court instinctively sides with the "Government." But the average juror, we must believe, would prefer to feel that he has been just and honest in his decisions. His difficulty is that he cannot comprehend, even in a general way, the import of these strange narcotics cases.

Wherefore it may safely be assumed that most juries would welcome, as the jury of our third episode did, such a brain-clarifying expedient as Mr. Lawson's homely definition of the much-mooted but hitherto unexplained "good faith" of a physician in his relations with his patients.

Chapter XXXVI

One Judge Reads the Law

A REPORT of the Narcotics Commissioner, in designating alleged derelictions of physicians, refers to purchases of narcotics apparently "excessive or otherwise open to suspicion," and to "improper practices" in connection therewith, and to the "improper sale or dispensing of narcotics." We have gained a general idea as to what these terms implied. Let us now examine them more specifically. The very crux of the narcotics imbroglio is involved.

Let it be understood, then, that, so far as physicians are concerned, the "improper sale or dispensing of narcotics" means one thing only—the writing of a prescription (usually for morphine) for a narcotic addict, who (it is or will be alleged by the Government) does not require the drug, in the quantity prescribed, for any malady other than addiction.

Now it cannot be too often reiterated that the Harrison Law makes no mention of addiction, nor of any other disease, and puts no restriction on the physician in his treatment of patients of any type. Therefore the prescribing of morphine for an addict, in any needed quantity, to relieve conditions solely incident to his addiction, is *not* an "improper practice" under the law, but an entirely legal and proper practice.

This must be self-evident to any one who understands English and reads the law, but we may fortify the conclusion by citing authoritative decisions. First, the Supreme Court, in the Linder case; a decision rendered July 2, 1925:

The Harrison Law "says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment . . ."

In the Boyd case, 1926, the Supreme Court quoted with approval the charge of a lower court to the effect that "it was admissible for the defendant in his professional practice to prescribe the drug either for 'the curing of morphinism' or for 'the relief of suffering from morphinism,' if he did so in good faith." Later a decision in the Strader case (Circuit Court) sustains this thesis, but in so doing displays also strangely anachronistic astigmatism of judgment, in seeming to recognize, by implication, the legality of the famous "regulations" issued by the Internal Revenue Bureau:

"The statute does not prescribe the disease for which morphine may be supplied. Regulation 85 issued under its provisions forbids the giving of a prescription to an addict or habitual user of narcotics, not in the course of professional treatment, but for the purpose of providing him with a sufficient quantity to keep him comfortable by maintaining his customary use. Neither the statute nor the regulation precludes a physician from giving an addict a moderate amount of drugs in order to relieve a condition incident to addiction, if the physician acts in good faith and in accord with fair medical standards."

Here the Court blows hot and cold at one breath, illustrating the difficulty encountered by even the most authoritative legal minds in grasping the fact that statutes made by the Congress and "regulations" (later known as Codes) made by a tax bureau are not of one ilk.

But a clear comprehension of this grammar-school truth came to the entire Court a little later, and found expression in the famous N. R. A. decision, which declared Bureau-regulations, or Codes, unconstitutional.

Then came the A. A. A. decision of January 6, 1936, already several times cited, in which the explicit declaration was made that the Federal Government has no power to "regulate the

practice of a profession"; from which it may be deduced, without undue strain on the logical faculties, that unconstitutional Codes cannot dictate to a physician the manner of treatment of his patients.

Before the Supreme Court came finally to these definitive pronouncements, however, a strange thing had happened. By rare and notable exception, a certain Federal District judge had read the Harrison Act and made for himself a simple and cogent interpretation of its meaning.

This extraordinary result was attained by reading the single sentence of the Harrison Act that refers to the subject, and assuming—as apparently no other magistrate had done during the twenty years since the statute was enacted—that the words meant just what they said.

The salient part of the single sentence in question is this:

> "Nothing in this section shall apply to dispensing or distribution of any of the aforesaid drugs to a patient by a physician—in the course of his professional practice only."

That simple negative sentence is *all* of the Harrison Act, insofar as the professional activities of physicians are concerned. On that basis alone, the "regulations" of the Internal Revenue Bureau declare that a physician may not: (a) alleviate the suffering due to drug addiction disease under any circumstances; nor (b) attempt to save the life of such a sufferer unless he is very old; nor (c) attempt to cure the disease unless the patient is under forcible confinement; nor (d) extend the narcotic treatment beyond thirty days, even with the patient in an institution under confinement; nor (e) administer morphine to a sufferer from cancer, late tuberculosis, tabes, or other incurable painful malady, except in minimum quantity to control the pains due to these maladies, without controlling the pains due to addiction disease; nor (f) under any circumstances dispense enough narcotic to last a cancer case or other incurable more than one

week, and even then only under carefully prescribed conditions (which would often be impossible of fulfillment in case, for example of a patient residing in the country, far from medical aid).

In a word, the entire machinery of the Blackmail Code was developed as a pretended interpretation of the simple sentence of the Harrison Act above quoted.

And for twenty years, the blackmailers "got away with it."

As already noted, it was ten full years before a majority of members even of the Supreme Court were induced to read the Law instead of the Code; and after that, they were sometimes more or less myopic. And as to Federal judges in general, they never dreamed of questioning the full legality of an "interpretation" that a child of eight would have pronounced "simply foolish."

All this you must bear in mind, in order to appreciate the iconoclastic action of the Justice of the District Court at Seattle, Washington, who on October 13, 1934, made judicial history by interpreting the Harrison Act, not in terms of the Blackmail Code, but in terms of the Law itself.

The name of this iconoclast—I acclaim it for high honor—is Judge John C. Bowen. The memorable interpretation, which substituted law for code, in advance of the N. R. A. decision, was made in the course of Instructions to the jury in a case in which a physician was on trial for alleged violation of the Harrison Act—the alleged violation consisting in the administration of morphine to an addict patient, by hypodermic injection, on seven successive occasions (about fifteen grains daily).

The indictment was of course the usual one, based on the Code, with the conventional claim that the morphine was not administered in the course of professional practice only, nor in good faith, nor for legitimate medical purposes.

The usual stool pigeon had been used to endeavor to entrap the physician, and to give testimony to order.

When the case went to trial, October 8, 1934, the chances were, statistically stated, 95.75 to 4.25 against the physician. In other words, he had about one chance in twenty-five of escaping conviction.

Had his lot been cast in Los Angeles, where as it happened a notable narcotics case of similar character was opened on the same day, his chance might better have been reckoned at one in a thousand—for there the Code was still doing service for Law, and judicial decisions were being rendered that outcoded the code itself.

I shall quote a few salient paragraphs from Judge Bowen's remarkable pronouncement. Every physician and every lawyer who opens this book should read these paragraphs, if nothing else in the volume, with careful attention.

The message they convey gives augury of the restoration of Law and the termination of the baleful era of the Blackmail Code.

JUDGE BOWEN: "I instruct you that the word 'patient' means one who applies to a physician for the alleviation of pain or disease.

"Drug addiction is a disease and a physician has a right to treat drug addiction just as he has a right to treat any other disease, and whatever hypodermic injections he believes to be necessary for the treatment of the habit, he can give and under that condition he is responsible to no one.

"Morphine addicts are diseased and proper subjects for treatment, and if the defendant believed that it was beneficial to said Stimpson to give the hypodermic injection of morphine, the defendant was entitled to do so and was guilty of no violation of law.

"If the defendant gave the morphine injection to the witness Stimpson for the purpose of relieving pain, he would not be guilty and your verdict could find him not guilty.

"If the defendant knew that the witness Stimpson was a narcotic addict, the defendant, in the course of his professional practice only, had a legal right to give hypodermic injections to said witness for the pur-

pose of relieving any suffering that he had as a result of his addiction to morphine.

"If the defendant in his judgment believed that it was the proper thing to do either for the purpose of curing the addict or for relieving pain to give the hypodermic injection then he had a right to give the hypodermic injection and he would be guilty of no crime.

"If the defendant as a physician using his best judgment gave the hypodermic injection described in the indictment, and you should further find, beyond a reasonable doubt, from the evidence, that he was mistaken in so doing or that his judgment was bad or that he acted as an incompetent physician in so doing, then you would still have to find the defendant not guilty.

"I instruct you that the defendant in injecting morphine into the witness Stimpson was responsible for nothing except his own honest judgment as a physician, and the mere fact that his judgment may have been bad, or that some other medical practitioner would not have done the same thing does not permit you to find him guilty for such lack of judgment.

"I instruct you that the Act under which the defendant is charged (The Harrison Act) is a Revenue Measure, and that the thing done, alleged to be a violation of the Act, must be such a thing as to interfere with the collection of revenue.

"The term "For legitimate medical purposes" means, in these instructions, among other things, to cause relief from disease, pain, or suffering, and it is the duty of a physician to relieve the pain and suffering of his patient when such relief can be effected by the use of morphine in quantity proportionate to the needs of such patient.

"If in this case the defendant administered in the course of his professional practice to his patient, as I have defined the term to you, morphine, and used the application of his skill and learning and his best professional judgment as to the amount of morphine then required by his patient, he should be by you acquitted, even though in your judgment or the judgment of other members of the medical profession the defendant may have been in error, either in regard to the needs of his patient or the diagnosis of the disease from which said patient suffered.

"Even though a patient may be addicted to the habitual use of morphine, this does not prohibit or prevent a regularly licensed and registered physician from administering morphine to such patient, if, in the judgment of the physician, the amount administered is proportionate to the needs of such patient, and such administration of such morphine is for a legitimate medical purpose in the professional practice of the physician.

"In this case there is a presumption that the defendant as a physician was acting in the course of his practice as a doctor, and that he was prescribing morphine for a legitimate purpose, and before this presumption could be overcome you must be satisfied by competent evidence to the contrary beyond any reasonable doubt."

Thus, paragraph by paragraph was presented—so far as I am aware for the first time in the long double-decade since the statute was enacted—a rational interpretation of the famous Harrison Narcotic Law.

At last a jurist had been found who could read a simple sentence of the English language, and accept the simple and obvious meaning of the words.

"I instruct you that the word 'patient' means one who applies to a physician for the alleviation of pain or disease. Drug addiction is a disease and a physician has a right to treat drug addiction just as he has a right to treat any other disease, and whatever hypodermics he believes to be necessary for the treatment of the habit, he can give, and under that condition he is responsible to nobody."

Responsible to nobody? Not even to the narcotics agent, who may come to suggest a "commensurate sum" by way of "compromise" for the offense of giving different treatment from what that layman thinks should have been given? No, as to that point, even, Judge Bowen gives explicit decision:

"If the defendant as a physician using his best judgment gave the hypodermic described in the indictment, and you should further find, beyond a reasonable doubt, from the evidence, that he was mistaken in so doing or that his judgment was bad or that he acted as an incompetent physician in so doing, *then you would still have to find the defendant not guilty.*"

Nothing said about "compromise" or the payment of "commensurate sums of money," you observe.

No suggestion of blackmail-tribute as an alternative to prosecution.

Nothing said about "excessive quantities" of the drug, nor about "improper practices" for which tribute must be paid.

On the contrary, the explicit assurance that the physician is the sole judge as to the quantity of the drug that may be required, and that even though his "practices" may be contrary to the opinions of other physicians, or his judgment bad, he is still guiltless of any crime and responsible to no one.

But what, then, becomes of the Blackmail formula? How can the narcotic agent browbeat the physician and demand tribute as the alternative to prosecution, if the agent is not permitted to challenge the physician's judgment and question his "practices"? On what ground can the would-be blackmailer base his charge, if it be granted that any one "who applies to a physician for the alleviation of pain or disease" is a patient, and that drug addiction itself is a disease that the physician has a perfect right to treat "just as he has a right to treat any other disease?"

It will be a sorry day for the official blackmailer and for his coadjutor the dope peddler when, following the Supreme Court and Judge Bowen, magistrates in general come to understand that the Harrison Law cannot be legally interpreted in terms of the Blackmail Code, but must be accepted for what its proponents intended it to be—a plan to put the administration and distribution of narcotics in the hands of physicians, who alone have education, training, and experience that gives them competency for the beneficent task.

Then the Blackmail Code will cease to exist, except as a weird historical document—an obsolete token of the very strangest era of popular delusion and Governmental persecution in the entire range of American history.

Chapter XXXVII

Hall of Justice

AT THE very hour when Judge Bowen was making his iconoclastic interpretations of the Harrison Act at Seattle, a memorable trial involving the chief physician of the Los Angeles Narcotic Clinic was under way in a Federal court of the California city. Almost coincidently, in another court at Los Angeles, another physician, who had been called in to treat Clinic patients after his colleagues had been arrested, was also on trial. He had found it impossible to continue the work, with a Federal narcotics agent (a layman, of course) at his elbow literally dictating the dosage of morphine that the physician should prescribe.

The physician, Dr. Edward H. Anthony, therefore withdrew; and the narcotics agent told the patients to shift for themselves —which meant simply that they must go to the dope peddler if they were to receive the drug which (by appraisal of at least two skilled hospital physicians) they imperatively needed, to keep them in anything like normal condition of body or mind.

Dr. Anthony, yielding to the importunities of three or four of the Clinic patients whose condition was particularly pitiable, continued to prescribe for them at his private office. For so doing, he was promptly arrested. The indictment was the stereotyped one charging violation of the Harrison Act in prescribing narcotics; coupled with a charge of Conspiracy, which involved also the patients who received the prescriptions and the druggist who filled them.

The trials of the two Clinic physicians, though before dif-

ferent judges, were conducted along the same lines—the conventional, standardized lines that had been followed in thousands of similar cases during the fourteen-year sway of the Narcotics Code.

Up to this time, Federal courts in general accepted the Regulations (Code) of the Narcotics Bureau (originally the Prohibition Bureau) as law, and it was customary to introduce medical witnesses galore, and to flood the court room with medical jargon quite meaningless to counsel, Court, and jury.

The smoke screen of words having accomplished its purpose, the befuddled jurors could be depended on to convict, or at least to bring compromise verdicts, on the theory that where there was so much smoke there must be some fire.

Statistically, of the physicians arraigned in Federal courts on charge of violation of the Harrison Act, in the year 1934 (an average year), 95.75 per cent were convicted.

Dr. Anthony's case, however, for some unexplained reason, failed to follow precedent. By a strange fluke, his jury did not convict,—though eleven men wanted to.

These eleven could see plainly enough that the prescribing of medicine for sick people, to relieve their great distress and perhaps save their lives, is an obvious felony.

But one juror, by strange exception, could not see the point. Possibly he recalled occasions when he had suffered an injury, or agonized with a kidney stone, or what not, and had been given a pain-quelling dose of the drug which the physician had prescribed for the sufferers who had been unwillingly paraded on the witness stand. He could not quite see how the doctor who saved him from agony had thereby committed a felony. And he so stated to the eleven associates who, under the hypnotic spell of the prosecuting attorney, were clamoring for the pound of flesh.

In simple but emphatic language he announced that he

would sit there till Hell froze over before he would convict a physician for solacing a sick man's agony by giving him medicine.

And as he evidently meant it, and that seemed a long time to wait, the eleven would-be Torquemadas renounced sadistic satisfaction, and sent word to the judge that the jury could not agree. In other words a hung jury.

That happened in October, 1934. Needless to say, the Federal prosecutor was not allowed to quash the indictment. The case was kept on the docket. But further trial was postponed, for a purpose—awaiting an appeal on another Clinic case.

And now, in the succeeding May, came the N. R. A. decision, which told the world (or such part of it as had eyes to read) that the famed Narcotics Code, which had dominated so many thousands of illegal trials, culminating in so many thousand illegal convictions, was null and void.

Then came the A. A. A. decision, in which the Supreme Court cited its own decision (of 1925) in the Linder narcotics case as illustrating the basic law that the Federal Government cannot interfere with State jurisdiction over the practice of a profession.

The days when those decisions were rendered were evil days for the big business man of Los Angeles and his confreres of the billion-dollar bankroll. They were evil days for his coadjutors. They forecast the dissolution of the illicit drug racket and of the Narcotics Bureau racket that is indissolubly linked with it.

But they were pleasant days for the victims of these rackets —not because of immediate effect, but because of the their hopeful augury. They were pleasant days for Dr. Anthony, who now became urgent for the incidence of the second trial that hung over his head. That trial, he now believed, could have but one sequel—a sequel very different from the earlier one.

The Federal authorities were not anxious to have the matter

put to a test. They saw the writing on the wall. But through Dr. Anthony's insistence the case was placed on the docket, and scheduled for trial in June, 1936—just two years after the prescriptions were written that were the allegedly incriminating documents named in the indictment.

Incidentally, it may surprise you to be told that it was with difficulty that the physician forced the case into court, though there was no thought on the part of the Government of quashing the indictment.

A simple explanation is that the animus of the entire procedure was merely the intent to close the Clinic permanently (or for as long a period as possible) in the interests of the dope peddler; and nothing could serve this purpose better than keeping physicians under indictment, without running the risk of their acquittal by bringing them to trial.

The significance of this will be better understood if it is related that a newly appointed Federal Judge in Los Angeles had rendered a decision in a minor narcotics case that set the coadjutors of the dope peddler to thinking.

It was more than rumored that here was a Judge of exceptional acumen and undaunted courage, who was unhampered by tradition and beyond the reach of political influence.

There were splendid men among the older Federal judges in Los Angeles, but ample experience had shown that no one of them clearly understood the difference between Law and Code; and each of them could be depended on to fall into the conventional Government traps, and conduct narcotics cases in the stereotyped manner—with the Washington-approved preponderant percentage of the convictions.

But what of this new incumbent, Judge Leon R. Yankwich? He had not hitherto been tested in a major narcotics case. The Government forces decided that he could perhaps be handled to best advantage and, so to say, broken to harness, if he were

worked on without a hampering jury. And the Anthony case seemed a very good opener, because the physician (as above related) had prescribed large quantities of morphine in defiance of virtual commands of the highest Narcotics Bureau authorities.

Dr. Anthony's attorney, with an ace up his sleeve, consented (with well-feigned reluctance) to have his client tried before Judge Yankwich, without a jury. In reality, that was of all things the one that he and Dr. Anthony most desired.

For their intent was to stake the issue fairly and squarely on the *Law*.

They were resolved not to be drawn off on any of the customary herring-trails. They purposed a campaign of simple logic, with none of the sophistries that decide matters for the average juryman.

In a word, they intended to introduce a defense which, if not absolutely novel, would be at least altogether unusual.

They designed to put forward the recent decisions of the Supreme Court to sustain the theses that: (1) the Harrison Law has no jurisdiction over the practice of medicine (Linder, Boyd, Nigro, Strader, and A. A. A. decisions); and that (2) the Narcotics Bureau Code (which pretends to dictate as to matters of professional practice) has no status in law (N. R. A. decision).

It was logically argued that if theses were accepted (and how could they possibly be rejected?) the question as to what Dr. Anthony had or had not done in the way of prescribing morphine for addict patients could have no significance whatever. If the constitutional plea were made at the outset, the case must be dismissed, on the ground of no Federal jurisdiction. There could be no doubt about that. But the attorney decided that a more comprehensive and valuable decision might be evoked by slightly modifying the strategy—to the extent of withholding

the constitutional plea until the Government had put in its entire case.

Then all the cards would be on the table, so to say; and the decision (regarded as inevitable) would be overwhelming.

When the case came into court, June 16, 1936, the plan just outlined was followed to the letter. The Government prosecutors must have been dumbfounded to see their best red herrings ignored, and the case held insistently to a consideration of questions of Law, with no concessions to the Codified sophistries that had resulted in disaster for thousands of physicians in precisely similar cases in years gone by.

There had been nothing like this in their experience—or for that matter in the experience, perhaps, of any Government prosecutor in a major narcotics (Federal) case in the fifteen years' tenure of the Blackmail Code that had done service as "the Harrison Law."

The Government attorneys stood to their guns and neglected no artifice.

They introduced the usual pair of "expert" physicians, to stroke their chins and stomachs and blatantly testify that they regarded it as better to let half a million sick people die unsolaced, rather than to give them medicine while they were not under confinement.

They had the jailed patients there, of course, to show how easy it is to keep a man from taking morphine while you have him under lock and key. They cited the old court decisions now sixteen years out of date, and tried to ignore the decisions of the past decade.

In a word, they brought out the same old bag of discredited tricks, and made the same shameless Pharisaical, dishonest, hypocritical exhibit, which would be disgraceful in a police court, and which dishonors the very name of a Federal hall of "Justice." The same old humiliating story.

But in a new setting. No fatuous jury to be bamboozled, mystified, confused; but a clear-eyed Judge, to hold the argument relentlessly to matters of fact and of law—repudiating absolutely every attempt to substitute the vulpine Code for the simple (but irrelevant) Harrison Law.

There could, of course, be but one issue. Dr. Anthony was acquitted, as a matter of course, on all counts.

His action in prescribing medicine for patients that bitterly needed the medicine was commended, not by implication merely, but explicitly.

And the words in which the decision was rendered constitute perhaps the most comprehensive and at the same time the clearest, most logical, and most impressive analysis of the Harrison Law, in its hearing on the activities of physicians, that has ever come from the lips of a Federal Judge.

For the general reader, it perhaps suffices to summarize this notable and epoch-marking decision with the statement that it cites the Harrison Law for what its framers designed it to be: quotes and interprets the major decisions of the Supreme Court with unswerving logicality; and applies to the individual case in hand the conclusion that Federal Law has no concern with the practice of medicine, and, specifically, no power to dictate to the physician as to the manner of treatment of addicts or other patients, the dosage of morphine, or any other feature of professional activity.

That logical, fearless decision marks the beginning of a new era in the history of the administration of Federal Law in the field of narcotics in America. It marks the beginning of the end of the illicit drug racket.

The man who dared render that decision, in the very stronghold of one of the chief leaders of the Illicit drug ring, and in the face of political influences that few others have ventured to brave, must rank high in the company of incorruptible

iconoclasts. Only those who know the true inwardness of the narcotics situation can fully apprehend the measure of courage that was required thus to defy the Powers That Be.

Hats off to Judge Leon R. Yankwich! May he soon have many followers.

In another chapter, I shall analyze in detail this remarkable decision, for the benefit in particular of medical and legal readers, and as a fitting summary of the narcotics situation as we have studied it.

Chapter XXXVIII

Judge Yankwich Interprets the Law

THIS chapter, designed chiefly for lawyers and physicians, should nevertheless be of interest to any reader who has found the paradoxicalities of the narcotics situation thought-provocative. The decision about to be analyzed was summarized in the preceding chapter. But in the present more extended summary and analysis, we shall have occasion to touch on some aspects of the subject not there presented, and even to refer to certain matters (such as the dosage of morphine, the constitutionality of the Harrison Law, etc.) that have scarcely been referred to previously in our text.

In the main, however, the present exposition will have the effect of a recapitulation and summary, rather than a new thesis; with added value, however, incident to its origin.

We are dealing with decisions of the Supreme Court as interpreted by a fair-minded and fearless Federal magistrate.

We must understand at the outset that the case under consideration has peculiar importance because of the large quantities of the narcotic drug, morphine sulphate, prescribed for the addict patients, four in number.

The indictments against Dr. Anthony, containing sixteen counts (with aggregate possible penalty of 80 years' imprisonment!), specified prescriptions for four addict patients, calling for upward of twelve grains a day for each patient, with an aggregate of about 1,612 grains during the period of about six weeks. The patients were all ambulatory.

Treatment was discontinued only when the patients were

arrested and sent to jail; where they were of course "cured" of the drug habit in the usual manner. To complete the formula, each patient was presently indicted, jointly with the physician, for "Conspiracy"—their crime being that they secured the medicine they needed by having the prescriptions filled at a drug store.

(It should be interpolated that the first judge before whom the case was tried dismissed these conspiracy charges, along with similar charges against the druggist. After the first trial —terminating, it will be recalled, with a hung jury—the patients were discharged from jail, and of course reverted promptly to the use of morphine;—which was quite all right, since they could now get no physician to prescribe for them, and so perforce patronized the dope peddler. As time for the second trial approached, the patients were again jailed; once more "cured," and held as material witnesses. Everything precisely according to formula.)

Here, then, was a case exactly duplicating several thousand others in which convictions had been attained for "violation of the Harrison Law." If a phonograph record had been made of the prosecution-charges and court procedure of any one of hundreds of other cases, this might have been reproduced in court to save lung power of a prosecuting attorney.

It might even be noted that two of the patients had appeared in the same witness-capacity in another Los Angeles Federal court a few months before, to give testimony (much against their will) against another physician who had treated them precisely as Dr. Anthony did—only with somewhat *smaller* dosage of morphine;—*and this other physician had been convicted and given a year's prison sentence, without parole.*

A perfect case, you see, from the "Government's" standpoint. Prescriptions in hand, in alluring profusion, calling for 1,612 grains—not far from four *ounces*—of the deadly morphine;—

enough to make upward of 12,896 average or ordinary doses.

Can you see the jury fairly staggered by the evidence of such reckless depravity?

Can you hear the quaver in the Government attorney's voice as he whispers the words that are almost too terrifying to be said aloud?

The case is as good as closed. The physician may as well pack up and prepare for the trip to the penitentiary.

Ah, but we forget. There is no jury present, to respond popeyed to these heroics. There is only a sane judge up there on the bench, who sees nothing in the least alarming in the fact that some sick people received medicine that they imperatively needed, in such doses as they manifestly required.

Twelve thousand "ordinary" doses?

Yes; but what have ordinary doses of morphine to do with the treatment of a patient whose malady involves habituation and tolerance for morphine in doses extraordinary? That is the essential characteristic of addiction disease. The patient who once would have felt the effect of an eighth-grain dose of the drug now requires doses of three or four grains, and several of them every day.

An "ordinary" or "average" dose for an addict of long standing is well konwn to be ten grains a day, or fifteen grains; not infrequently twice or three times the larger amount; sometimes fifty grains, seventy-five, even a hundred grains. At least one case is authentic that required 240 grains a day.

This individual alone would have consumed the entire 1,612 grains that Dr. Anthony prescribed in a single week.

And what of that? What possible difference does it make, in any legal or moral sense, whether the amount of drug consumed be one-eighth of a grain or 240 grains? There are practical differences, obviously—differences of cost and of convenience of administration.

But does it morally or legally matter whether you smoke three cigarettes a day or thirty?

The same answer for morphine—which has no more to do with morals, in any event, than has nicotine; and much less to do with health than nicotine; and a hundred times less to do with either health or morals than alcohol.

And as to the matter of Law—the Harrison Law in particular; the dosage of morphine given a patient by a physician has no more to do with that than with the number of cigarettes you bought at the tobacco store this morning.

The United States attorney knew that, of course. But he thought it was a secret known only to the Government. What was his amazement, then, to discover that Judge Yankwich—one magistrate in a hundred—also knew the law.

The prosecutor had made the usually effective argument (with tongue in cheek) that, even if the physician was entitled to prescribe for the patients, the Harrison Act did not permit him to prescribe such quantities.

And this was Judge Yankwich's response:

"The Linder case also lays down the rule which, to my mind, is very clear and is made clearer by subsequent cases which have interpreted it,—that the Act does not attempt to tell how much a physician may prescribe to an addict. We must bear in mind in reading the Linder case that the Court there was not passing upon a case after trial. The Court was merely dealing with the sufficiency of an indictment which charged one delivery to a person and did not even charge sale. So that what the Court said about four grains or about a moderate amount, must be interpreted in the light of that fact. In fact, its own language, in interpreting the Webb case, intimates that it does not intend to delimit either the quantity or frequency with which a physician in his practice may prescribe. Such an attempt would make the Court the arbiter of the practice of medicine.—

"I am satisfied, therefore, that the Linder case and the cases which interpret it, lay down the rule definitely that the statute *does not say what* a physician may prescribe to an addict. Nor does it say the *quantity* which a physician *may* or *may not* prescribe. Nor does it regulate

the *frequency* of prescription. Any attempt to so interpret the statute, by an administrative interpretation, whether that administrative interpretation be oral, in writing, or by an officer or by a regulation (Code) of the department, would be not only contrary to the law, but would make the law unconstitutional as it would be clearly a regulation of the practice of medicine."

Need any comment be added to that searching, logical, common-sense, definitive, yet revolutionary deduction? Only a few words of congratulation that a second judge has been found to supplement and round out Judge Bowen's masterly analysis by giving universal application to rulings of the Supreme Court which, because they dealt with the specific conditions of a restricted case, have been perpetually misinterpreted.

It is true that no candid and logical mind ever questioned the import of the Linder decision (in fully rounded meaning), but neither candor nor logic prevail in the usual court-room presentation of a narcotics case. So Judge Yankwich's analysis constitutes a service inestimable.

This decision checkmates in advance the ruse of any Prosecuting attorney who in future has the hardihood to resort to the old trick of blatantly harping on the question of dosage of a narcotic drug as administered to an addict by his physician.

For the matter of that, however, it is not merely the question of *dosage* of the drug that is set at rest by this remarkable decision. Even the quotation just given, it will be noted, referred to matters of wider import. For full understanding, we must turn to other parts of the message.

At the outset, it is noted that there has been question as to the constitutionality of the Harrison Act itself. When the Supreme Court appraised the law as constitutional, there were four dissenting justices, including Chief Justice Taft. Let it be noted, however, that the difference of opinion rested solely on diverse views of the meaning of the law, as worded. Says Judge Yankwich:

"A majority of the Court sustained the Act upon the ground that it is not an invasion of the province of the State; that it is a revenue measure only and that the moral ends of the statute are incidental only. Mr. Chief Justice Taft, Justices McKenna, Van Devanter, and McReynolds expressed the view, to which they have adhered, that the Act was not a revenue act, was an invasion of the province of the States, and was, therefore, unconstitutional.

"I merely am referring to these facts," Judge Yankwich continues, "in order to indicate that we must bear in mind the import of the Act,—that the Act is a borderline statute which must be interpreted in such a manner as to bring it within the constitutional power. And if we depart from it and interpret it either as attempting to regulate the disposition and sale of narcotics or attempting the regulation of medicine, we extend the Act to the realm which the Supreme Court has repeatedly said the Federal Government cannot enter, under penalty of unconstitutionality. . . . The moment we assume that this Act *regulates the sale* within the State of narcotics and that it aims to regulate the practice of medicine we must hold it unconstitutional."

In citing this vital conclusion, Judge Yankwich is not merely stating a personal opinion, of course; he is summarizing verdicts of the Supreme Court, on a matter regarding the substance of which there has never been difference of opinion.

In support of this view, there is further quotation from the decision in the Linder case, in which Mr. Justice McReynolds spoke for the undivided Court:

"Obviously, direct control of medical practice in the States is beyond the power of the Federal Government. Incidental regulation of such practice by Congress through a taxing act cannot extend to matters plainly inappropriate and unnecessary to reasonable enforcement of a revenue measure . . ." The Harrison Act "says nothing of 'addicts' and does not undertake to prescribe methods for their medical treatment. They are diseased and proper subjects for such treatment . . ."

Again, a decision of the Supreme Court in the Bohrman case (1922) is cited, as follows:

"'. . . The opinion cannot be accepted as authority for holding that a physician, who acts bona fide and according to fair medical standards, may never give an addict moderate amounts of drugs for self administra-

tion in order to relieve conditions incident to addiction. Enforcement of the tax demands no such drastic rule, and if the Act had such scope it would certainly encounter grave constitutional difficulties.

" 'The Narcotic Law is essentially a revenue measure and its provisions must be reasonably applied with the primary view of enforcing the special tax.'

In a subsequent case, Nigro v. United States (1928) 276 U. S. 332, Mr. Justice Taft, writing the opinion for the Court, in answering certain certified questions by the Eighth Circuit Court of Appeals, came back to the subject of interpretation of the Act, saying at page 341:

" 'In interpreting the Act, we must assume that it is a taxing measure, for otherwise it would be no law at all. If it is a mere act for the purpose of regulating and restraining the purchase of opiates and other drugs, it is beyond the power of Congress and must be regarded as invalid . . .'

"So we have in these cases," Judge Yankwich concludes, "the two limitations which the Court has placed upon the Act—two statements which hold the Act must not be interpreted as endeavoring to regulate the local sale of drugs, or as an attempt upon the part of the Federal Government to regulate the practice of medicine."

Other cases cited in substantiation of the same view, each making approach from a slightly different angle, are the Boyd case of 1926, the Strader case of 1934, and the DuVall case of 1936.

Thus (even without mention of the AAA decision, which confirmed the Linder decision), we have a series of Supreme Court verdicts ranging from 1919 to 1936, in which it is declared and reiterated, with no dissenting opinion, that the Harrison Act was and is a pure revenue measure, having neither purpose nor power to regulate the practice of the profession of medicine.

During that period of seventeen years, this same Harrison Act

has been invoked thousands of times in Federal Courts, and ardently advanced and defended as having precisely the power which the Supreme Court denied it.

And the record of ninety-five convictions in every hundred attests the humiliating—the dumbfounding—fact that only here and there, and by rare exception, a Federal judge has been found who had the knowledge, the sense of justice, or the courage to recognize the authority of the Supreme Court of the United States as greater than that of the handlers of the billion-dollar bankroll.

Chapter XXXIX

The Reason Why

A STRANGE recital, this story of varied aspects of the narcotics situation in America, as we have followed it. As to the factual structure, there is, I believe, small opportunity for challenge or rebuttal. But at many stages there must have arisen questions as to the motives that can conceivably have led men of presumptive sanity and probity to become parties to transactions so bizarre as to appear to have no point of contact with rationality—and to lie far afield from justice or even honesty.

On occasion, our narrative has revealed, or attempted to reveal, motives of unequivocal character—or rather, plain motives of very equivocal character. At other times, the bald facts have been presented, with no obvious attempt at elucidation. It remains now, here at the end, to glance back and attempt a summary, in the light of all the knowledge that our investigation makes available.

At the outset, let it be emphatically stated that there is no question of a master-villain who in the beginning planned this bizarre situation. Something as to that was said in early chapters, where we dealt with fanatics rather than Pharisees. No human imagination could have conceived in advance the strange divagations of improbability that were to become realities.

We may assume, without great stress on the probabilities, that at the outset, back in 1914, when the Harrison Act became Federal law, all persons concerned had the best of motives, and desired to produce a beneficent statute.

If the patent medicine lobbyists find place doubtfully under this mantle of charity, such dubeity is unimportant, for that phase of the situation has had no great significance in any event. Nor, indeed, does it greatly matter what the proponents of the central theses of the Harrison Act intended, since, as we have seen, that Act, after being placed on the statute books, virtually ceased to have *any* significance, being totally disregarded from the outset.

The significant thing, as we have been told over and over, was the set of "regulations" to which we have given the name "Blackmail Code," the essential feature of which ran exactly counter to the text and import of the law that was supposed to be interpreted.

The *Law* put the entire handling of narcotic drugs into the hands of physicians. The *Code* denied the physician any voice in the use of narcotics for treatment of the particular type of patients believed to be in the minds of the law-makers.

And in that denial, as we have seen, lay the germs of the entire bizarre development. The entire tragedy, with its legal, medical, and economic bearings, lay engermed in the simple order which forbade physicians to treat ambulatory patients suffering from addiction disease.

Of course the order itself did not use any such phrase as "addiction disease." It did not contemplate the existence of any such disease. It was couched in terms of the assumption that drug addiction is a vicious voluntary habit; that the "craving" for drugs is a monstrous and willful obsession, veritably malignant and little less than criminal. Coupled with this mistaken notion was the further obsession, on the part of the makers of the Code, that it should be relatively easy to control the supply of narcotic drugs, and make them unavailable for the addict—who would then be automatically "cured" of his "habit."

It would be time wasted to argue with anyone who holds to

either of these delusions at this late day. But it is of interest to recall that the Narcotics Commissioner, who has dominated the situation since 1930, does *not* entertain these delusions. His own utterances give assurance that he understands that (a) the supply of narcotics has not been shut off, and (b) the addict is not "cured" of addiction by incarceration for any limited period.

Which brings us face to face with the question of Motives, our theme of the moment. Specifically, our question is this: What motive actuates the Commissioner of Narcotics in his perennial antagonism toward members of the medical profession who attempt, either as individuals or collectively, to assuage the ills of narcotic addicts; to relieve their suffering; to restore them to a condition of self-respect and usefulness?

Putting the same question in different terms, Why does the Commissioner use every influence to prevent the rehabilitation of sick addicts, and to keep them in the clutches of the dope peddler? Why does he, in effecting that end, resort to methods that can only be described as persecutionary; and which at the same time are illegal, indeed unconstitutional, as appraised by the Supreme Court?

It is needless here to enter into details. Entire chapters of the book have been devoted to such elucidation. We are here concerned only with the motivation of the strange activities.

Many times I have attempted to answer the question by assuming that the Commissioner is actuated by an infantile guilelessness, on a foundation of profound fanaticism. But when the evidence is scanned, such an hypothesis appears to be very doubtfully tenable. But our text supplies documentation from which the reader may form his own hypothesis. Whatever the motive, the results are deplorable, as we have seen.

The Narcotics Bureau, in its campaign against physicians, would be virtually powerless without the cooperation of the Department of Justice, as represented by United States Attor-

neys and Federal District Judges. We have seen a good deal of their activities. What motivates those activities?

For the most part, the answer is to be found, I believe, in the mental makeup of the lawyer, whether acting at the bar or on the bench—a judge being, of course, merely a lawyer who has been promoted, with no radical change of outlook, and only slightly modified viewpoint.

Both prosecutor and judge regard themselves as component parts of the "Government," and instinctively ally themselves against any defendant who has been brought to their attention in an unfavorable light by another department of the "Government."

And such is the situation of any physician who is turned over to the officers of the Department of Justice by the officials of the Narcotics Bureau. By hypothesis, physicians who have been accused, but whose alleged malfeasance is of minor character, will be permitted to "compromise," without being reported for trial in court. In other words, any physician who is reported to the prosecuting attorney has been adjudged guilty by the Narcotics officials.

The alleged "presumption of innocence until guilt is proved" is, in any event, an obvious sophistication. In this case, it is not even a pretence.

The defendant is assumed to be guilty, and the case is presented to the grand jury in such guise as to leave that body no option but to indict.

What can the grand jurors know about the narcotics law? How can they appraise a case where there is no dispute as to any matter of fact? How are they to suspect that the writing of what seems an ordinary prescription is a felonious procedure, except as the Attorney so informs them? The whole business is new to them.

The very wording of the indictment, a thousand times re-

peated in Federal courts, is evidence of the grand jury's ignorance of the entire situation.

The Federal judge, when the case comes into the court, is usually not much better informed.

Medical matters are involved of which he has not the most elementary knowledge.

And, strange though it may seem, his grasp of the legal aspects of the matter may not be much more comprehensive. The chances are about ten to one that His Honor will repose on the authorities presented by the Prosecution, which in turn are relayed from Washington—with sedulous omission of such rulings of the Supreme Court as do not accord with the Washington viewpoint.

It may seem incredible, but I have myself listened to a summing up by a Federal judge, purporting to interpret the Harrison Law, in which no Supreme Court citation less than ten years old was introduced—the definitive rulings of 1925 and subsequent years (Linder case, Boyd case, Nigro case, etc.) being utterly ignored.

And the motive for such partisan presentation? Was there unconscious prejudice, based on ignorance? Was there unconscious desire to stand well with the authorities at Washington? Was there failure to grasp the clear meaning of words, as exposited by the Supreme Court?

Did His Honor fail to understand that the Federal Government "has no power to regulate the practice of a profession" (Supreme Court in Linder case, reiterated in AAA decision, etc.), and that therefore his court has no jurisdiction over the matters that made up the chief bulk of the testimony at the trial?

As I have listened, I have been of two minds—or many minds.

Some decisions seemed so unfair that one could not believe them unbiassed.

Some were so imbecile that one was ready to excuse everything on the ground of sheer incompetency.

And some were of such character that the hypothesis of "good faith" on the part of the Court seemed absolutely untenable.

What then? Well, that question answers itself—for any one who has read this book.

I will only add that such experiences prepare one to applaud, with the enthusiasm of the unexpected, such decisions as those of Judges John C. Bowen of Seattle and Leon R. Yankwich of Los Angeles, with which the reader is familiar.

The rulings of these magistrates show that a knowledge of the decisions of the Supreme Court in narcotics cases is filtering down to the District courts. They augur a new era, in which the District Court will no longer be an appanage of the Narcotics Bureau.

When Federal judges in general come to comprehend the meaning of the Harrison Law, as interpreted by the Supreme Court, the day of the narcotics racketeer, unofficial and official, will be near sundown. The billion-dollar bankroll will fade away, and cease to be anything but an evil memory.

When will that time be? Well, *two* judges have learned to read the law within eleven years after it was clearly stated by the Supreme Court. Make your own calculation as to how long it may take the others to fall in line. I am neither a prophet nor the son of a prophet.

I admit that past experience does not justify optimism, and I do not underrate the power of Superstition. Still, I can't help being heartened by that terse phrase of Justice Roberts, in which, adverting to the Linder decision of ten years before, he fortified that verdict with the memorable words:

"Federal law cannot regulate the practice of a profession."

When that phrase has sunk into the minds of United States Attorneys and Judges, there will be few indictments against

physicians brought on the charge of prescribing medicine for sick people; and Federal courts, when narcotics cases are in question, will have been transformed from Star-Chambers to Halls of Justice.

It will be a notable and memorable transformation.

Chapter XL

Some Practical Suggestions

SINCE the time surely approaches when this medical subject will be restored to medical hands, it is perhaps not inexpedient to make a few practical suggestions, drawn from personal experience, as to the handling of narcotic cases.

The best orientation is gained by thinking of addiction as a deprivation disease, comparable to diabetes. The addict, like the diabetic, is approximately normal in body and mind only while there circulates in his blood a substance that the normal body does not require to have administered from without. Each requires a hypodermic injection every few hours in order to experience peace or comfort. In neither case is the injection curative; but that fact does not make it the less essential.

As to curability, there is not much to choose; but the slight advantage lies with addiction, if not of too long standing. Much depends on the hereditary and educational bias of the individual. If the addict's nervous system is not primarily too unstable, and if addiction is not complicated by any other incurable pathology, there is always the possibility of withdrawal of the drug; and a reasonable probability that the "cure" will be permanent, unless environmental stress should become excessive.

But in reality, few men or women become confirmed addicts unless they have a psychopathic twist to begin with; and it should be axiomatic to say that there is small probability of being able to make over such a personality on a better model than nature provided in the first place. On the other hand, if cir-

cumstances permit a somewhat sheltered life, environmental stress being minimized, the balance between stress and resistance may not be broken down. And of course a case in which addiction developed because of a painful malady may hope for permanent relief if the painful malady should be eradicated.

In a word, each case is a law unto itself. But there is one rule that applies to every case of addiction that has reached a chronic stage—the *time element* is a prime essential in considering treatment. Sudden "cures" by abrupt stoppage or brief substitution are not cures at all, and should never be so considered. The term of any curative treatment worthy of the name is a period of many months, not to say years. Every cell in the body is involved. The change is like the transfer of a marine creature to fresh water. Only by slow gradations can such a transfer be effected with safety or with hope of making the new environment liveable.

My own method of the elder day, and the only method that gives the slightest chance of success when the patient is not confined, is a method of slow withdrawal, over a term of many months, with substitution of non-narcotic stimulants (strychnine, caffeine, quinine) and props to the blood-forming mechanism (in recent times, non-specific proteins, chiefly of vegetable origin, called proteals).

The patient at no time must have knowledge of what he is taking; and the narcotic, withdrawn by almost infinitesimal stages, must have been altogether absent for many weeks before the patient is made aware that it has been totally withdrawn. Mental hygiene and moral support are important factors. Needless to say, you must have the patient's full cooperation from the outset. But as to this, there is no difficulty. The intelligent patient is all eagerness to be free from thraldom. It would obviously be mere folly to undertake treatment otherwise.

Meantime, what of the tens of thousands of addicts who have complicating maladies, or whose addiction is of such long standing as to preclude all probability of successful permanent withdrawal of the drug?

There are thousands of these who might have been cured had it been possible to give them rational treatment during the early years of their infirmity—including many boys of the A. E. F., who became addicts through use of opiates in trench or hospital.

But the Code of the narcotic tax agents had so terrorized the profession that no wise physician dared treat them in home or office, and there were not hospital beds available for one in fifty of the addicts in need of treatment.

The Government in whose service they had become addicts, now condemned them to permanent addiction.

What is to be done for these hopeless incurables? The answer is not difficult. Their case is simply that of thousands of diabetics who must continue all their lives to take insulin daily; and of other thousands of myxedema cases who must always take thyroid extract. There is nothing more appalling about one case than about the others.

In each case, it is merely a matter of finding out what dosage of drug is required to keep the system "in balance," and continuing to supply the need. To deny the addict the right to secure legally and at minimum cost the medicine he needs, is precisely as logical, as humane, and as just as to require a goiter subject to pay a dollar a tablet for thyroid extract, or the diabetic to pay one hundred times its valid price for insulin;—with the added proviso that either sick person is to be pronounced a felon if he is caught purchasing the drug at all.

But why revert to the past? Why, indeed, except that when these lines are written, it is *not* past but *present* that one refers to. The goiter patient may, indeed, secure his thyroid extract legally and at nominal cost; the diabetic may secure insulin un-

der sanction of law. But the addict is denied legal access to his medicament, and in actuality is named felon if he is found to have purchased it, at a hundred times its normal cost, at the only available source.

But enough of that. The time is at hand—it *must* be at hand —when the orgy of bureaucratic sadism will end; when reason and law will prevail in America, as they now prevail (as to the handling of narcotic drugs) in every other civilized land.

So it will not be long before the incurable addict, once more recognized as a human being, will be able to seek medical aid, and to receive the attention of skilled physicians, like every other sick man in the world.

Then the result will be that the sick man, tested by competent experts as to the quantity of narcotic needed to keep him in balance—precisely as diabetic and myxedemic are tested—will be "rationed," and enabled to secure the drug at minimum cost, as openly and legitimately as the other incurables receive their insulin, their thyroid extract, or any other medicament their infirmity demands—or as the nicotine addict gets his tobacco.

When that day comes—and I repeat that it *must* come soon —the last of the Dark Age superstitions will have been banished, and an American will at last be able to hold his head erect in a group of civilized people of other nations.

But not till then.

Appendix

75TH CONGRESS, 3D SESSION

H. J. RES. 642

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1938

Mr. COFFEE of Washington introduced the following joint resolution; which was referred to the Committee on Interstate and Foreign Commerce and ordered to be printed

JOINT RESOLUTION

To provide for a survey of the narcotic-drug conditions in the United States by the United States Public Health Service.

Whereas no survey has been made of the narcotic-drug situation in the United States since the one made by Congress in 1919 that can be considered as accurate as that one; and

Whereas our Federal Narcotic Bureau announces annually that the number of addicted persons is not more than one hundred and twenty thousand; that the number of addicts is neither increasing nor decreasing; and

Whereas a recent survey made by the State of Washington discloses the number of three thousand five hundred addicted citizens as against the number of three hundred and fifty as reported by the Federal Narcotic Bureau; and

Whereas this survey also discloses that two hundred and fifty new cases of addiction are uncovered by law-enforcement departments each year, while the deaths recorded do not exceed fifty addicts each year; and

Whereas the citizens of the United States are now declared to be the largest consumers of licit and illicit morphine in the world, and the situation in the State of Washington is no different, proportionately, than that of other States; and

Whereas the lack of knowledge regarding this great menace in all its phases is appalling; and

Whereas at a congressional hearing held last year on the question of mandatory sentences for repeated violations of Federal narcotic laws a representative of the Federal Narcotic Bureau said, "Narcotic law violators, like all other merchants, licit and illicit, are continuously endeavoring to broaden their market," a direct admission by the Department itself that the illicit industry in narcotic drugs is increasing and that the number of addicts must be increasing: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Surgeon General of the United States Public Health Service, under the supervision of the Secretary of the Treasury, is authorized and directed to conduct, through the facilities of the Public Health Service, an investigation and survey of the conditions in the United States existing now and during the past twenty-five years with respect to the importation, production, distribution, and use of narcotics, in order to secure full information as to (a) the extent of unlawful activities with respect to narcotics, and the number of persons connected with such activities; (b) the extent of addiction to the use of narcotics in the several States and Territories, the number of addicts therein, the causes of addiction, the availability and use of various kinds of treatment, and other related matters; and (c) the conditions and trends with respect to the prevalence of evils arising from narcotics, with a view to aiding Congress to enact laws, and aiding the law-enforcing agencies to administer the laws, so as to properly protect the people from such evils. The Surgeon General shall report the results of such investigation and survey, together with a compilation of the supporting data and statistics, and his recommendations for legislation or other action by the United States, to the Congress of the United States and to the President, not later than

SEC. 2. For the purpose of carrying out this resolution the United States Public Health Service is authorized to cooperate with the States, Territories, and municipalities, and with any public and private agencies interested in the narcotic problems, and, with the consent of such State, municipality, or agency, to utilize any services or facilities made

available by such State, municipality, or agency. Every officer and employee of the United States is authorized to supply the Public Health Service with such information relating to the investigation and survey authorized by this resolution and contained in the records of such officer and employee as the Public Health Service may request.

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this resolution.